Environmental Policy Analysis: Report on Honduran Environmental Laws and their Real or Potential Impact on the Intermediate Result "Improved Management and Conservation of Critical Watershed" and the Central America Free Trade Agreement (CAFTA) Related Activities.

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List of Acronyms and Abbreviations

ACDI	Agencia Canadiense para el Desarrollo Internacional
ACORDE	Asociación Coordinadora de Recursos para el Desarrollo.
AFE-COHDEFOR	Corporación Hondureña de Desarrollo Forestal
AMADOH	Asociación de Madereros de Honduras
AMCD	Alcaldía Metropolitana del Distrito Central
AMHON	Asociación de Municipios de Honduras
AMIS	Areas de Manejo Integrado.
APAH	Asociación de Periodistas Ambientalistas de Honduras
ASCONA	Asociación Sureña para la Conservación del Ambiente.
BANADESA	Banco Nacional de Desarrollo Agrícola
BANMA	Banco Municipal Autónomo
BCIE	Banco Centroamericano de Integración Económica
BIRF/BM	Banco Interamericano de Reconstrucción y Fomento, Banco Mundial
CADESCA	Comisión de Asistencia para el Desarrollo Económico y Social de Centroamérica
CAFTA	Central America and the United States Free Trade Agreement
CAHDEA	Centro Asesor de Honduras para el Desarrollo de las Etnias Autóctonas.
CARE	Cooperación Americana de Remesas al Exterior.
CATIE	Centro Agronómico Tropical de Investigación y Enseñanza.
CELADE	Centro Latinoamericano de Demografía
CENIFA	Centro Nacional de Investigación Forestal Aplicada.
CESCO	Centro de Estudio y Control de Contaminantes
CIIU	Clasificación Industrial Internacional Uniforme
CITES	Convention on International Trade on Endangered Species
CN	Congreso Nacional
CODECO	Congreso para el Desarrollo Comunal
CODDEFFAGOLF	Comité para la Defensa y Desarrollo de la Flora y Fauna del Golfo de Fonseca
CODEL	Comité de Emergencia Local
CODEM	Comité de Emergencia Municipal
CODEMUN	Consejo de Desarrollo Municipal
COHCIT	Comisión Hondureña de Ciencia y Tecnología
COHDEFOR	Corporación Hondureña de Desarrollo Forestal
CONAMA	Comisión Nacional del Medio Ambiente
COPECO	Comisión Permanente de Contingencias
CONABIOH	Comisión Nacional de Biodiversidad de Honduras
CONOT	Comisión Nacional de Ordenamiento Territorial
CORFINO	Corporación Forestal de Olancho
COSUDE	Cooperación Suiza de Desarrollo
CSJ	Corte Suprema de Justicia
DAPVS	Departamento de Areas Protegidas y Vida Silvestre

DEC	Dirección Ejecutiva de Catastro
DECA	Dirección General de Evaluación del Impacto y Control Ambiental
DGAC	Dirección General de Aeronáutica Civil
DGEC	Dirección General de Estadísticas y Censos
DIMA	División Municipal de Agua
DIGEPESCA	Dirección de Pesca y Acuicultura
DIMUNDE	Dirección Municipal de Desarrollo
DRH	Dirección General de Recursos Hídricos
DRI	Desarrollo Rural Integrado
EEC	European Economic Community
EIA	Environmental Impact Assessment
ENEE	Empresa Nacional de Energía Eléctrica
ESNACIFOR	Escuela Nacional de Ciencias Forestales
FAO	Food and Agriculture Organization
FEDEAMBIENTE	Federación de Organizaciones Ambientalistas
FEDECOH	Federación de Desarrollo Comunitario de Honduras
FHIS	Fondo Hondureño de Inversión Social
FIASA	Forestal Industrial Agua Fría
FIDA	Fondo Internacional de Desarrollo Agrícola
FOPRIDEH	Federación de Organizaciones Privadas de Desarrollo de Honduras
FOSOVI	Fondo Social de la Vivienda
FY	Fiscal Year (Año Fiscal)
GOH	Gobierno de Honduras
GTZ	Agencia de Cooperación Técnica Alemana
IBF	Indice Biológico de Contaminación Orgánica por Familia de Insectos Bentónicos
IDA	Asociación de Desarrollo Internacional
IDB	Inter-American Development Bank
INAH	Instituto Hondureño de Antropología e Historia
IHT	Instituto Hondureño de Turismo
IHMA	Instituto Hondureño de Mercadeo
IICA	Instituto Interamericano de Mercadeo Agrícola
IMF	International Monetary Fund
INA	Instituto Nacional Agrario
INASC	Instituto Nacional de Servicios Comunitarios
IR	Intermediate Results
IWRM	Integrated Watershed Resources Management
LMA	Ley para la Modernización y Desarrollo del Sector Agrícola
LRA	Ley de Reforma Agraria
MASICA	Medio Ambiente y Salud del Istmo Centroaméricano
MEP	Ministerio de Educación Pública
MSP	Ministerio de Salud Pública
NEPA	National Environmental Protection Act
NGO	Non-governmental Organization
NORAD	Organismo Noruego de Desarrollo Internacional
OAS	Organization of American States

ODA	Administración de Desarrollo Ultramar
OIFS	Organismos Financieros Internacionales
OLDEPESCA	Organización Latinoamericana de Desarrollo de la Pesca
OMS	Organización Mundial de la Salud
OPD	Organización Privada de Desarrollo
PAA	Plan de Acción Ambiental
PAAR	Proyecto de Administración de Areas Rurales
PAHO	Pan-American Health Orgzanition
PEA	Población Económicamente Activa
PEAA	Población Económicamente Activa Agrícola
PIB	Producto Interno Bruto
PLANDERO	Plan Nacional e Desarrollo de la Región de Occidente
PNB	Producto Nacional Bruto
PNUD	Programa de la Naciones Unidas para el Desarrollo (United Nation Development Program)
PNUMA	Programa de la Naciones Unidas para el Medio Ambiente (United Nations Environment Program)
POSCAE	Programa Centroamericano de Economía
PRADEPESCA	Programa Regional de Apoyo al Desarrollo Pesquero de Centroamérica y Panamá
PRAF	Programa de Asignación Familiar
PROCOINY	Proyecto de Cooperación Indígena de Yoro
PRODERO	Programa de Desarrollo de la Región de Occidente
RUTA	Unidad Regional de Asistencia Técnica. Banco Mundial
SERNA	Secretaría de Recursos Naturales y Ambiente
SAG	Secretaría de Agricultura y Ganadería
SAT	Sistema de Alerta Temprana (Early Warning System)
SO's	Strategic Objectives (Objetivos estratégicos)
SINEIA	Sistema Nacional de Evaluación del Impacto Ambiental
SINAPH	Sistema Nacional de Áreas Protegidas de Honduras
SANAA	Servicio Autónomo Nacional de Acueductos y Alcantarillados
SECPLAN	Secretaría de Coordinación, Planificación y Presupuesto
SECOPT	Secretaría de Comunicaciones, Obras Públicas y Transportes
SEDA	Secretaría de Estado del Despacho del Ambiente
SENASA	Servicio Nacional de Seguridad Agropecuaria
SGJ	Secretaría de Gobernación Y Justicia
STICA	Servicio Técnico Interamericano de Cooperación Agrícola
UICN	Unión Internacional para la Conservación de la Naturaleza
UNAH	Universidad Nacional Autónoma de Honduras
UNESCO	United Nations Education, Science and Cultural Organization
UPSA	Unidad de Planificación Sectorial Agrícola
USA	United States of America
USAID	United States Agency for International Development
VIDA	Fundación Hondureña de Ambiente y Desarrollo
WRI	World Resources Institute
WWF	World Wildlife Foundation

Executive Summary

This document presents a description of Honduras' main environment laws and analyzes existing gaps and problems of the institutional and legal frameworks to achieve effective compliance and enforcement.

This first chapter contains a description of the environmental legal framework in the Republic of Honduras itself that addresses which laws currently exist in what areas, including the Constitution, main environmental laws and institutions with environmental responsibilities.

The Honduran Political Constitution approved in 1982 establishes, in Article 145, that the state is obligated to conserve the environment such that it is suitable for people's health. This article omits recognizing the importance of an ecological balance by solely referring to people's health. In addition, establishes norms that are intended to protect the rights of Honduran citizens, by providing them exclusively with the management of the print and televised media, establishing percentages of Honduran workers in companies, and prohibiting foreigners from owning property on the coast.

There are many environmental laws in Honduras. The 90's marked a structural change in legal ordinances in Honduras. The General Environmental Law was approved in 1993, creating a Secretariat of State in charge of environmental issues and natural resources and established the EIA as an instrument for environmental control. The General Environmental Law is the main law regulating the permissible impact on the environment by commercial operations and is the most important law in relation to protected areas. This is because it establishes the framework for designing, administering, and controlling protected areas, including national parks. This law provides a solid framework, although it is not always consistent and clear, for promoting environmental protection. The law directly stipulates what is forbidden and which procedures should be followed. In practice, this law lacks specific implementation mechanisms, so the level of compliance is weak.

Forestry legislation has existed in Honduras since the beginning of the 20th Century. Currently, decentralizing competencies about forestry management to the municipalities has been promoted. The law on forestry incentives approved in 1993 that intended to promote incorporating the private sector in forest activities such as plantations or conservation has not been developed since the financial resources that would sustain the pertinent funds have not been provided. There is concern by the social and environmental sectors about the excess usage of forest resources, primarily with regard to latifoliate forests.

The declaration of protected areas has been recognized since the beginning of the century; however, it was at the beginning of the 80's that a more stable process was

initiated. This process was strengthened in 1993 by the creation of the Honduran National Protected Area System (SINAPH in Spanish). It settled in more firmly in 1999 when this regulation was promulgated. There is no integral regulatory framework for protected areas.

In the forestry sector, the institutional responsibility is shared by three state secretariats: The Secretary of Natural Resources and the Environment (SERNA in Spanish), which created a biodiversity directorate; the Secretary of Agriculture holding the Fishing and Aquaculture Directorate (DIGEPESCA in Spanish); and the Honduran Tourism Institute (IHT in Spanish). Likewise, responsibility for protected areas are held by:

- An COHDEFOR autonomous entity holding the mandate for managing protected areas and wildlife.
- The municipalities' hold the mandate, as has been mentioned, for conserving and safeguarding protecting, patrolling, and controlling the biological resources in their jurisdiction.

Honduras has an ambitious National Biodiversity Strategy however its application is insufficient and the DIBIO-SERNA shows institutional weaknesses in its development. There are biodiversity fields that are not regulated such as: access to genetic resources or intellectual property for living organisms. The regulations on wildlife do not provide an integrated framework for conservation, management, or sustainable use.

The country faces complex water problems such as excess resource usage and serious aquifer contamination. Water resources have been regulated by the health sector and the environmental sector, including the potable water storage services, sanitary sewers, and garbage disposal. Legislation in the water sector is fairly broad and spread out across several laws. The current Water Law was issued in 1927 and has lost effect and operational capacity. Other important laws governing water resources are: the Health Code and the Potable Water and Sanitation Sector Framework Law. There is a lack of coordination and overlapping competencies between the different institutions regulating this resource.

Regarding coastal-marine resources, the fishing law establishes strict regulations about the types of activities that can be carried out in the coastal areas that in practice are rarely applied to environmental violations. DIGEPESCA is the office within the Secretary of Agriculture responsible for providing fishing permits, establishing fishing prohibitions, and implementing the fishing law in coordination with SERNA. DIGESPESCA shows institutional weaknesses, little authority, and limited resources for carrying out this responsibility, which enables promoting measures against depleting fishing resources. With regard to the marine coastal zone and resources, given the fact that diverse public institutions exist with related competencies, there are deficiencies in inter-institutional coordination.

In 1990 the new Municipality Law introduced fiscal reforms and increased the municipalities' capacity for raising and administering their own funds. This law contains dispositions that provide the municipalities and communities with a greater share in

defending, protecting, and improving their natural resources and the authority to raise their own funds and invest them to benefit the municipality, with special attention to preserving the environment. No clarity exists about the relation and scope of the competencies between the national institutions and the municipalities. Currently, a good deal of confusion exists about this point and no mechanisms for coordination and collaboration exists that are sufficiently strong to clear up the situation.

Honduras is a country that is highly vulnerable to natural disasters, primarily due to the increase in deforestation and the deterioration of the watersheds. The Permanent Contingency Commission (COPECO in Spanish) was created in 1990 to prevent risks and take care of natural disasters in coordination with 40 international, governmental, and non-governmental institutions.

With regard to land planning, there is the General Land Planning and Human Settlement Act for Sustainable Development, which provides a regulatory framework to help ensure environmental integrity for decisions on land use. Likewise, the Land Zoning Act promotes developing a national land zoning policy that is integrated with national planning policies.

The environmental and natural resource issue is the subject of competency from numerous national and municipal institutions. This institutional scattering produces institutional competency overlaps when two more institutions have competencies for the same matters. Primarily, with regard to forests and water, no *regulatory entity* exists to establish guidelines for the institutions with competencies relative to the same natural resource at the national level, and even less so for the different territorial levels, between the national and local levels.

There are currently two bills under discussion in Congress on Forestry and Water Resources. The Bill on Forestry, Protected Area, and Wildlife has some of the problems that currently exist. Its conceptual take includes, within the same bill of law, regulations that should be carried out through different legal bodies and upholds institutional conflicts by not clarifying the scope for national and municipal institutions in particular. With regard to protected areas, this bill of law will not solve the conflicts facing the organizations that are managing the country’s protected areas.

The water resource bill arises from one of the recommendations by the International Monetary Fund and the World Bank, within the framework of a state modernization policy. In its dispositions, the framework law facilitates greater participation by the users and provides access to private service provision models.

Environmental impact assessments are a technical instrument that enables a better-informed decision-making process about the development activities and public and private investment regarding the quality of the environment, ensuring a greater useful life and sustainable productivity for projects. However, the EIA process is not working the way it was designed or is being used as an instrument for decision-making for

development, indicating a lack of process comprehension on the part of the local population and the lack public participation.

There is a consensus that the main problem with environmental legislation in Honduras is how it is applied and fulfilled. In some cases, the norm has to do with programs, i.e., it tries to reach an objective for which a regulatory norm is required that does not exist. Despite the fact that voluntary compliance instruments have been established as incentives, they have not been developed or set in place.

The second chapter analyzes the land tenure situation in Honduras. This chapter describes the laws related to land tenure in Honduras and procedures for land title registration. No legal security exists about the right to land ownership. The property system has not covered the national territory and no links exist with the survey system. With regard to environmental matters, there are very serious consequences because the legal system in Honduras should be clear and delimit the protected areas and national and community forests. Tensions exist between reinstating the rights of the indigenous peoples and social *campesino* movements to gain land rights, conservation needs, and productive activity development interests on the part of the sectors that are economically and politically powerful.

The third chapter analyzes the implications of the Free Trade Agreement between Central America and the United States (CAFTA). It is predicted that approving the CAFTA may promote more investments in Honduras that will make use of the available natural resources. The current environmental legislation has sufficient regulations to ensure that any use made will be sustainable. However, the application control mechanisms for these norms and institutional capacity must be reinforced and strengthened.

Concern exists in the different sectors about the capacity of medium and small sectors to compete with larger companies. No information exists at the citizenry level about CAFTA's contents nor its possible impact on the country. The people interviewed believe that CAFTA's main impact will be on forest and water resources. For the people making up the environmental, *campesino,* or social movements, the CAFTA suggests new risks about capital concentration.

The main recommendations of this study are:

1. Strengthening of Institutions with Environmental Responsibilities

Enforcement and compliance with environmental legislation necessarily requires that the competent organizations have the capacity and human and financial resources necessary to be able to comply with the assigned competencies. It also requires greater coordination between the different institutions responsible for enforcing environmental norms, so the Secretary of Natural Resources should assume the function of regulator and coordinator.

2. Harmonize Environmental Legislation with Other Laws such as Those Regulating Investment.

Legislation and institutions with jurisdiction over the production sector such as agriculture, forestry, tourism, and industry have not properly incorporated conservation objectives. Investment should be clear about and aware of the need to comply with the environmental legislation in effect. This harmonization process is a fundamental element for preparing the country to be approved for the CAFTA.

3. Strengthening Legal Environmental Norms

The law-making processes, both nationally and locally, should begin with taking into consideration the socio-economic context and promote participation by those interested sectors that may be affected by the regulations. Some areas exist where a legal vacuum has been identified that needs to be resolved. The environmental law creation process requires additional political support to deal with urgent environmental problems.

4. Strengthening Municipal Capacity

The current decentralization policies have given responsibilities and obligations with regard to environmental matters to the municipalities. Unfortunately, the municipalities do not receive sufficient training and human and financial resources to be ensured that they will be able to fulfill the environmental responsibilities. Consistent, systematic training should be given on environmental legislation and administrative and judicial procedures in general. The municipal and other local authorities could show that they are more efficient and effective with regard to costs, particularly when they are supported by local citizens and environmental groups.

5. Incorporating and Strengthening the Environmental Component within the Justice Administration Program.

What is needed is a permanent training program on environmental legislation, for both technical and legal aspects, for people participating in the Justice Administration function: judges, district attorneys, and public defenders. The Environmental Prosecutor's Office should be strengthened so it can extend its activities throughout the country. This control organization has been mentioned as one of the most active in environmental legislation compliance activities. It needs strengthening in the form of human resources so it can have prosecutors in all the country's departments, equipment for collecting evidence, inspections, etc., and training programs on administrative, technical, and legal issues, including evidence procedures and methods.

6. Strengthening Public Participation.

In order to provide a real opportunity so citizens can participate in making decisions, informational programs must necessarily be developed about environmental rights and duties. The competent institutions should establish and fortify communications channels

with civil society and the private and academic sectors, to keep them informed about projects or activities (whether public or private) that may affect them; about legal or administrative reforms and in general maintain forms of accountability.

7. Collaboration Relationships with All Sectors of Society.

To improve environmental legislation application and compliance, the government institutions can promote and develop a voluntary compliance system where the private sector commits itself to environmental quality standards and to follow up on enforcing those standards. Incentives can also be developed, along with eliminating counterproductive incentives that promote pollution or improper use of natural resources instead.

Private sector efforts should be segment focused, providing them special conditions so companies may improve their environmental performance and their competitiveness. One mechanism for promoting private sector involvement is the promising growth of "Corporate Social Responsibility" (CSR) initiatives across the region. Through organized private sector programs, firms are learning about global trends toward greater company involvement in solving pressing social, environmental and institutional problems facing their countries.

Introduction: USAID National Plan for Honduras

The Central America and Mexico (CAM) Regional Strategy, FY 2003-2008, provides the framework for regional and country-specific programs intended to achieve overarching regional goal of a more democratic and prosperous Mexico and Central America, sharing the benefits of trade-led growth broadly among citizens. The new regional strategy narrows the focus of USAID investment to a limited number of results within the three performance "arenas" established in the Millennium Challenge Account: Just Governance, Economic Freedom and Investing in People.

The primary goal of the USAID/Honduras' program is to increase economic growth to reduce poverty. To achieve this goal, the program concentrate on three principal strategic objectives:

1. More responsible and transparent governance.
2. Open, diversified and expanding economies.
3. Healthier and better educated people.

Strategic objective (SOs) 1: Just and Democratic Governance: More Responsible and Transparent Governance

- Intermediate Result (IRs) 1.1: Strengthened rule of law
- Intermediate Result 1.2: Greater transparency and accountability of government

Strategic objective 2: Economic Freedom: Open, Diversified, Expanding Economies

- Intermediate Result 2.1: Laws, policies and regulations that promote trade and investment
- Intermediate Result 2.2: More competitive, market-oriented private enterprises
- Intermediate Result 2.3: Improved management and conservation of critical watersheds

Strategic objective 3: Investing in People: Healthier, Better Educated People

- Intermediate Result 3.1: Increased and improved social sector investments and transparency
- Intermediate Result 3.2: Increased and improved educational opportunities for youth
- Intermediate Result 3.3: Improved integrated management of child and reproductive health
- Intermediate Result 3.4: Spread of AIDS and other infectious diseases controlled

To respond to the problems and challenges in the country, USAID/Honduras is working with public and private partners. Activities under the IR2.4: Improved Management and conservation of critical watersheds will be supported by:

- IR 2.4.1: Improved end use management of critical watersheds
- IR 2.4.2: Increased marked access for environmentally friendly products and services

- IR 2.4.3: Increased harmonization and enforcement of environmental laws and regulations
- IR 2.4.4: Increased use of clean production technologies

Recognizing Honduras' continuing vulnerability to natural disasters, USAID/HONDURAS decided to incorporate the programs under the "Disaster preparedness: timely humanitarian assistance and crisis response" into the IR 2.4 activities. In addition, the Integrated Watershed Resources Management (IWRM) Activity will support the GOH's Poverty Strategy and current Government Plan 2002-2006. Both of these highlight the link between sustainable resource management, poverty alleviation and disaster prevention.

Watershed resources are essential for achieving sustainable economic development. Watersheds in Honduras are in a critical situation that impacts agriculture production, affects water sources for human consumption, and increases the country's vulnerability to floods and landslides.

Unsustainable use of natural resources, and particularly those related to watershed and river basins, are depleting and degrading Honduras productive land, forest and water resources, including regionally significant diversity of terrestrial and coastal flora and fauna. Natural resource degradation compromises major economic growth sectors and attendant household livelihoods. Integrated management of natural resources including water, land use and environmental policies will help achieve the goals of good governance and sustainable development.

Increase in trade, diversification of private investment and increase in employment will contribute to reduce poverty in the country, however, the sustainable management of natural resources, particularly water resources, environmental protection and conservation of biological diversity, will allow a long term sustainable economic growth.

I. Legal Environmental Framework of the Republic of Honduras

There is an entire body of law in Honduras that relates to the promotion, development and control of natural resources and the environment. Constitutional provisions, environmental laws, land use laws, infrastructure laws, and administrative law all specifically or generally address different aspects of environmental protection. Interviews with a variety of experts and stakeholders suggest potentially serious problems in terms of application of laws and a number of troublesome jurisdictional issues.

The following are brief presentations of some of the key laws and legal issues, their most important environment-related provisions, and some discussion of how they might relate to the overall legal environment governing the sector.

1. CONSTITUTIONAL ISSUES

The Political Constitution of the Republic of Honduras was approved in 1982. The Constitution has a social orientation and does not include any specific reference to the right to a healthy and ecologically balanced environment, as it is recognized in most of the Latin American Constitutions.[1]

The Constitution establishes that International Treaties approved by the National Congress and ratified by the Executive Branch, are ranked under the Constitution and above national laws. [2] In addition, the Constitution set up restrictions for foreigners to buy property or develop some type of activities including: management of printed newspapers, radio or television news programs which are exclusive for Honduran citizens born in the country (article 73); or requires employers to hire at least 90% of Honduran employees and pay them at least 85% of all salaries paid by the company, except in specific cases determined by law (Article 137).

Article 107 of the Honduran Constitution of 1982 prohibits ownership by foreigners of land, coastal resources, marine resources, islands, etc. within 40 Km of the coast.[3] "The

[1] After the United Nations Conference on the Human Environment, in Stockholm in 1972, most countries in Latin America included environmental provisions in their Constitutions. Countries include Panama, Cuba, Peru, Ecuador, Chile, Honduras, El Salvador, Guatemala, Nicaragua, Brasil, Colombia and Paraguay. "Constitutional provisions in general provide for the protection of natural resources and the protection of health from environmental harm. The right to a healthy and ecologically balanced environment as a human right, recognize the right to health, physical wellbeing in relation to healthy ecosystems". Brañes, Raúl; "Manual de Derecho Ambiental Mexicano", Fondo de Cultura Económica, México, 1994. p. 641, 642.

[2] Articles 16 and 17

[3] Article 107: "The State, Municipal, Communal or private territories, located in the border zone with neighbor States, or in the costs of both oceans, in a distance of 40 kilometers inland, and on the islands, bays, coral reefs, cliffs, syrtes and sand banks, can only be acquired, possessed or be titled by Hondurans by birth, societies made up in their totality of Honduran partners or by institutions of the State, under penalty of nullification of the act or contract. The acquisition of urban estate, within the limits of the previous paragraph, will be regulated by a special law. It is prohibited for property registrators to register documents that violate these provisions." Honduran Constitution, Decree no. 131 of January 11, 1982

article is very strongly worded, stating that these resources "can only be acquired, possessed or be titled by Hondurans by birth, societies made up in their totality of Honduran partners or by institutions of the State, under penalty of nullification of the act or contract." As a practical matter, land in urban areas appears to have been exempted, de facto, from this provision. A 1990 law, Decree 90-90, formally clarified the article to exclude "urban areas" from this provision. Recently, there has been heated debate regarding a proposed reform to Article 107. In order to bolster tourism investment, a new Decree has been proposed. Decree 294-98 would add a paragraph to Article 107 stating "Acquisitions and possession on the coasts of both seas, on the islands key, reefs, breakwaters, cliffs, syrtes and sand banks are exempted when destined for tourism projects duly approved by the Executive power in conformity with a Special Law." If passed, this would call for creation of a "Special Law" to define the specific circumstances, conditions and procedures under which foreigners could own land in the exclusion zone.

Traditional communities, particularly the Garifunas (an Afro-Honduran cultural group with long standing historical roots in the Caribbean coastal area) allege that such a change would alter their communities and in many cases remove them from land that they have held (frequently without formal title) for generations. There are now counterproposals such as the proposed "Regulatory Law for the Application of Article 107," which provides for a more limited reform, rapid clearing of land titles and direct support of the traditional communities through "investment certificates" and other funding mechanisms that would result from increased tourism development".[4]

The most specific environmental provision is article 145, in the Health Chapter, that establishes that "the State will preserve the appropriate environment in order to protect human health." Further the Chapter on Education and Culture (article 172) states that "the sites of natural beauty, monuments and cultural patrimony of the nation will be under the State's protection."

In the Title related to the Economic Regime, Article 340 of Honduras' Constitution provides important overarching concepts that relate to parks. The article declares that "technical and rational exploitation of natural resources to be of public need and utility and its use, as well as property rights, is subject to the social interest (article 103). The State has the responsibility to enact regulations for the use of these resources and can impose conditions on private citizens based on the social interest."

Historically, this type of Constitutional provision is used to give government direct discretion and control over resources that are, or could be, of strategic interest. Typically this type of authority is used to allow for land use planning, forestry, mining and other activities including parks. It is this constitutional authority that permits the government to declare protected areas and determine appropriate use of lands within them and around them.

[4] Hawkings & Associates Staff, 2002, "Legal and Regulatory Aspects of Coastal Tourism Development in Honduras" Report # 4, Sustainable Coastal Turism Development Proyect. World Bank June 2002.

In addition, the Constitution recognizes the protection of intellectual property rights (article 108); acknowledges that foreign investment is a complementary activity but cannot substitute local investment (article 336); the Title on Agrarian Reform recognizes and protects the rights and interest of indigenous communities in the country, especially in the lands and forests where they are settled.

2. GENERAL DESCRIPTION OF THE LEGAL ENVIRONMENTAL FRAMEWORK

A. General Environmental Law

Honduras' General Environmental Law, created by Decree No. 104-93 which entered into force on July 20, 1993, is the primary law governing the allowable environmental impacts of business operations. The law is loosely modeled on several United States environmental laws, particularly, the National Environmental Protection Act (NEPA). The law sets forth as its general objectives the protection of the natural environment, conservation and rational use of natural resources, which are defined broadly to include cultural, historical and social resources, and the prohibition of pollution. The law provides for the creation of an administrative organ under the direction of the "Secretaría de Estado en el Despacho del Ambiente" that later merged into the "Secretaría de Recursos Naturales y Ambiente" (SERNA), Environmental Council, a Technical Advisory committee and an Environmental Prosecutors Office (Procuraduría del Ambiente).

The General Environmental Law is the most important law relating to protected areas. This law establishes the framework for designation, administration and oversight of protected areas, including national parks. Titles II to IV set forth the various categories of resources protected under the law, and include: wild flora and fauna, forests, soils, agricultural areas, urban areas, coastal and marine resources, the atmosphere, minerals and hydrocarbons, solid and organic wastes, agrochemicals, toxic and dangerous pollutants, and historical, cultural and tourism resources.

Protected Areas

Article 36 of the Law establishes the creation of the Protected Areas System for the administration of protected natural areas that are subject to zoning and management plans.

Article 38 states that 'owners of private lands and inhabitants of protected areas are allowed to engage in productive activities according to specific technical norms and the land use designation established in the decree that declares the area.' In theory, this means that owners and inhabitants must follow the general rules established for their activities (i.e. Honduran Tourism Institute (IHT) rules for tourism, COHDEFOR rules for forestry, Ministry of Agriculture rules for agriculture, special municipal ordinances, etc) and any rules specifically established for those activities in protected areas of different

designations. In practice, we have found no specific rules for the most likely activities to be conducted in protected areas.

This provision implies that municipalities in coordination with the Secretariat of Natural Resources and other relevant agencies are responsible for:

- The delimitation of protected areas, buffer zones and core areas ("zonas nucleos" in Spanish);
- Preparation of technical norms; and,
- Delimitation of administrative jurisdiction

Wild Fauna and Flora

Article 41 establishes that protected wild fauna and flora are the species of plants and animals under any type of protection. The law prohibits their use, hunting, collection, trade and destruction. The article requires that an inventory be kept (non-specific as to whom) of the species and a list of protected species. For non-protected species of flora and fauna the law requires management plans prepared according to technical and scientific studies and the establishment of moratoria, allowed hunting areas, characteristics of the species and identification. Granting of licenses requires a previous evaluation and the payment of a fee. These dispositions are very general and do not specifically define which are the hunting areas, only states the authority to establish such areas.

Forests

Articles 45, 46, 47 establish that forestry resources should be managed and used according to the principle of protection of biodiversity, sustainable use and multiple use.

Marine & Coastal Resources

Articles 55 and 56 establish that the exploitation of marine and coastal resources is subject to technical criteria set out by competent authorities, for its rational and sustainable use. These provisions require the establishment of moratoria, stock assessments, delimiting of areas, land use and management plans and environmental impact assessment (EIAs) for all works or activities that could have a "negative impact on the environment." Article 58 states that "the execution of any civil work in the coastal areas requires an EIA and should avoid harming the terrestrial or aquatic coastal area or causing important ecological changes."

Articles 70 – 73 of the General Environmental Law provide for state protection of anthropological, historical, artistic, cultural and ethnic resources, and state that they should receive special state support in preserving traditional uses of renewable resources. Article 72 states that tourism resources are of national interest, that tourism projects should identify, care for and conserve the natural and historical values in these regions. Article 73 states that tourism projects in protected areas should be carried out in

accordance with management plans, and should consider ecotourism as a source of employment and income.

In the Regulations of the General Environmentla Law, article 72 states that the National Ecotourism Commission should coordinate with the public and private sectors to promote tourism development in protected areas. Article 73 of the regulations states that if visitors in protected areas damage the flora or fauna, the state can immediately cancel their operating licenses.

"In practice, the tourism sector is facing serious problems in the coastal zones including:

- Construction of infrastructure on the ocean: Municipalities are selling "properties" on the ocean and granting construction permits;
- Marine dredging in coastal reefs with permit from the Municipalities.

However, the Honduran Tourism Institute (IHT) does not have authority to impose sanctions and SERNA does not implement the General Environmental Law in coastal zones."[5]

Standing and Public Participation

Article 80 (and Article 10 of the regulations) confers "standing" to "any person", to sue before the competent authority any project which has contaminating or degrading effects. In theory, this should allow for citizens and civil society organizations to take action against violators of environmental laws.

Incentives

Article 81 provides for waivers of taxes for equipment used for pollution control and prevention, and provides for public recognition of pollution prevention and environmental improvement projects. In the future, this section of the law could be expanded to provide other types of incentives. For example, tax breaks for activities that better protect natural resources (such as reforestation, watershed protection, trail management, and erosion control). The existing article could also be clarified to include energy efficient equipment, renewable energy (particularly solar), innovative waste management techniques, water saving or reuse equipment and a variety of other recognized investments that improve environmental performance.

Institutional Coordination and Municipalities

In practical terms, one of the most important issues is how municipalities administer the law. Article 27 states that Municipalities coordinate their activities with the "Secretaria." Article 28 (c) gives the Secretaria authority to design integral land use planning or determine land use plans according to economic demographic and social factors, however there are no clear procedures to do it. Article 29 also gives municipalities authority to develop urban development plans, to promote environmental protection and conservation pollution control preservation of historic places and a host of other functions. Articles

[5] Emelie Weitnauer. Jefe, Unidad Ambiental. Instituto Hondureño de Turismo

36-37 allow for the creation of national protected areas, by Presidential Decree, and state that municipalities shall participate in the development of natural areas in accordance with the goals of community development and environmental protection. Article 47 also states that municipalities shall participate in the administration of the National Forestry Law.

The regulations on this point state that the municipalities shall be independent of the national organ or entity, but then state that they are subject to policy goals and strategy at the national level, and that their plans, programs, projects, etc, should be performed within national priorities and goals. Articles 59 through 62 of the Environmental Regulations enumerate the relationship between the municipalities and SERNA. Generally, the regulations require that SERNA should assist the municipalities in implementing the Environmental Law, by providing information, technical assistance and guidance. Municipalities are required to submit their urban development plans to the Secretaría for approval. There is a clear descentralization policy which delegates many responsibilities to Municipalities, therefore there should be clear coordination channels between national institutions and local governments. However, there is a need to strengthen Municipalities so they can carry out their environmental functions and establish appropriate coordination mechanisms for a better decision-making at the local level. Section F will analyze this issue further.

Penalties and Infractions

Title VI sets forth the procedures and penalties for environmental harms and violations of the law. These include criminal and administrative violations and they can be punished with imprisonment, fines, closure of operations, and suspension of activities, revocation of licenses or permits, and repossession of goods.

It should be noted that environmental crimes include activities that pollute and harm human health or the environment, and the manufacture, transport, or commercialization of toxic substances. However, destruction or overuse of natural resources does not appear to be a criminal offence. Under the regulations, overuse of a resource including taking endangered species is considered an administrative infraction rather than a crime. Under the law the maximum fine permitted is 1 million Lempiras (approximately $55,000). Making the taking or harming of endangered flora and fauna a criminal offense should be a priority issue for future modification to this law. The administrative sanctions alone are unlikely to offer sufficient power to deter poachers. This may be especially critical for the taking or damaging of marine species where the economic benefits of poaching can be very high.

The law also provides for state inspection of projects and also requires municipalities to have inspection programs in their jurisdiction. Article 102 provides that residents of local communities should participate directly in defense and preservation of the environment, and that private organizations should be involved in plans and measures to promote environmental conservation. Article 103 gives the population the right to be informed by

the national government and the municipalities of "all operations of the government on this field."

The General Environmental Law provides a strong, though not always clear and consistent, framework to guide sustainable development. The law states directly what is prohibited and what procedures must be followed. Like general environmental laws in many countries of the region, the goals and objectives of the law outstrip the institutional capacity to actually implement it. Interviewed people from the natural resource sector point to a range of minor to severe problems associated with implementation of the law. For example, municipal governments are concerned about lack of clarity on land use planning issues. Most of the NGO's managing the National Parks are concerned about abnormalities in permitting processes that are allowing African palm plantations in their buffer zones in what were previously forested areas. No one interviewed believes the EIA process is functioning the way it was designed or is adding much value to development decisions – stating a lack of understanding of the processes by civil society and local population and lack of consideration of local expertise in the decision-making process which is run in Tegucigalpa.

B. Legislation on Forest Resources

Legislation on the use and management of forest resources in Honduras is quite extensive since it dates back to the beginning of the century.[6] However, in spite of laws passed and reforms, there is no clarity or applicability of these rules.[7] Some of the most important laws include:

- Decree 85 of 1971, considered to be the Forestry Law, was the first to include the principles of sustainable yield.

- Law/Decree 103 of 1974, or the COHDEFOR (its acronym in Spanish) law; created the Honduran Corporation of Forest Development and also creates the Social Forestry System and nationalized the forests.

- Decree 31-92, Law for the Modernization and Development of the Agricultural Sector, establishes the need for a management plan to take advantage of the commercial forestry uses and permit the sale of national forest timber at auction. It produced profound changes in the sector, recognized the land owners' right to own the forest on their land, allowed the participation of foreign capital in forestry operations, and excluded the public sector from trading and industrializing forest products, which were consequently reserved for the private sector.

[6] Segura, O.J. Kaimowitz, D.J. Rodríguez, 1997, "Forestry Policies in Central America: Analysis of Restrictions on Developing the Forestry Sector." IICA-Holland/LADERAS C.A., CCAB-AP, Frontera Agrícolas, 348 pp.
[7] Directives Regarding Sustainable Environmental Development in Honduras, Topic: Sustainable Forest Management, no. 4, Tegucigalpa, June 2002.

Forest policies can be described as developing during three different periods:

1- During the 70´s, under the system of the state as promoter, COHDEFOR was created to control the exploitation, conservation, reforestation and trade in privately owned and state forests. This institution was responsible for logging, milling, processing resin, and transforming forest products and created industries such as saw mills and pulp and paper processing plants. It sought to promote greater participation by the local community in the forest through cooperatives and farmer associations, thereby implementing the Social Forestry System.

2- In the 80´s, weakness in the state-run business changed its orientation toward restoring ownership of the trees in the forests to the land owner, privatized trade in timber, closed and privatized the state forest companies, and promoted the sale of standing timber

3- In the 90´s the promotion of decentralized actions at the environmental level was prevalent. The Municipality Law grants municipalities rights to manage community forests. Furthermore, it establishes coordination with COHDEFOR – in reality authority levels are unclear.

a) Forestry Law (Decree # 85)

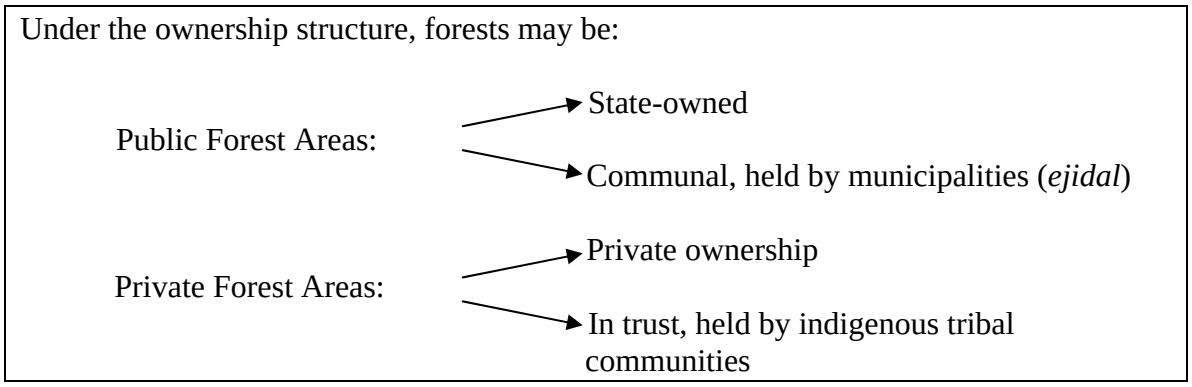
The objective of the Forestry Law[8] is to attain and perpetuate maximum direct and indirect benefits that may be derived for the nation from the flora, fauna, water, and soils in forest areas; ensure protecting and improving the latter, and achieve a more rational use, industrialization and trade of forest products.

Forest areas are:

a. Lands that sustain associations between plants, with trees or bushes of any size being dominant, such that, even if logged, they would be capable of producing wood or other forest products, of influencing the climate, soil or the water systems or providing refuge for cattle or wildlife.

b. Lands dedicated to forest use, understood to be any land, whether covered by vegetation or not, which must be dedicated exclusively or primarily to forest use because it is not suitable for agriculture, because it is suitable for producing wood or other forest products, because of its function or the possibility of offering protection for water and soil, because of its esthetic value, or for any other similar reason of general interest.

[8] Enacted on November 18, 1971



This law establishes the authority and administrative framework for national parks. Articles 61, 62 and 63 establish that:

1) The Secretary of Natural Resources has the power to grant the status of national park to locations and areas in order to protect the natural beauty of the landscape, the richness of the flora and fauna, and the particular hydrological and geographical characteristics;
2) The executive branch is responsible for declaring national parks -- these areas will be considered private protected forest areas; and
3) Managing national parks will be the responsibility of the forestry authority (COHDEFOR), in collaboration with tourism authorities.

b) Forestry Law Regulations

The forestry law regulations[9] further clarify definitions, authority and responsibility with regard to these institutions. Chapter 7 covers national parks and other natural protected locations.

Article 82 defines national parks as "places with unaltered ecosystems, whose purpose is to protect the natural beauty of the landscape, the richness of the flora and fauna and the particular hydrological and geographical characteristics." Other types of national parks include botanical, zoological and geological reserves. Private lands can be declared national parks and should be acquired by COHDEFOR "in advance."[10]

Articles 86 and 87 give COHDEFOR the responsibility of managing national parks and, to do so, it must coordinate its conservation, promotional and administrative functions related to national parks with the central government through the Secretary of State,

[9] Presidential Agreement Number 634 of April, 1984, published in La Gazette on July 17, 1984

[10] The government may acquire any areas necessary for complying with these objectives, where through a purchase-sale agreement, exchange, or expropriation. The first two situations suppose the consent of the owners to transfer their property to the government. In the third situation, the government must declare a need for or the public usefulness of the land and begin an expropriation proceeding, including appraising the land and the corresponding payment therefor. In the case of conflicts, when the owner does not accept the appraisal, the case may be submitted to the court system.

independent agencies, local government, and scientific, recreational and cultural institutions, etc. At the same time, under article 87, NGOs are eligible to undertake the administrative functions in national parks in coordination with COHDEFOR. This article is the basis for the dozens of agreements that transfer the responsibility for the management of national parks to NGOs.

All of the national parks on the North Coast, for example, are operated by NGOs under "agreements" authorized under the Forestry Law regulations. Some of these pertain to the executive branch and others have been designated by "legislative decree," which are even more binding. These agreements authorize NGOs to manage the park in the name of the government. The majority of NGOs managing these parks believe that the agreement constitutes a viable working tool, but worry about the vagueness of terms, particularly with reference to fees charged to users, how these fees are allocated (e.g. do they go to the NGO or the national treasury?) and with regard to their role in making decisions regarding the use of land in buffer zones.[11]

c) Forest, Reforestation and Forest Protection Incentive Law

This law, approved in 1993, was expected to establish incentives to promote the incorporation of the private sector in forest activities such as plantations or conservation. Unfortunately, this has not happened.

It establishes incentives for reforestation, protecting natural forests, protecting watersheds, plantations to produce lumber, and plantations for industrial raw materials.

This law included the establishment of a forestry fund dedicated exclusively to financing providing the incentives established in this law. The Government was to provide support in the sum of two million lempiras and issue bonds in the amount of ten million lempiras. In addition, COHDEFOR was to transfer 20% of its budget. It was also expected that support would be channeled from international aid via programs involving foreign debt exchange for nature, donations, or loans.

This 52-article law includes a detailed definition of the activities that may be supported, the parties who benefit from them, the procedure for identifying priority areas, control systems, and a follow-up commission.

However, this law has not been applied since no financial resources have been provided to begin the program.

d) The Honduran Corporation for Forestry Development Law

COHDEFOR is the Honduran Corporation for Forest Development, constituted by the 1974 Law/Decree No 103. It is a semi-autonomous institution with legal standing and its own capital. Its objective is to take optimum advantage of forest resources, ensure

[11] Hawkins & Associates Staff, nota supra

protecting, improving, conserving and increasing these resources and to generate funds to finance state programs in order to speed up the economic and social development process for the nation (Article 2).

The established hierarchy includes:[12]

- The President of the Republic
- Secretaries of State:
  - Natural Resources and Environment
  - Economy and Trade
  - Finance and Public Debt
  - Public Defense and Security
- Executive Secretary of the High Council for Economic Planning
- Executive Director of the National Agricultural Institute
- Representative from the logging companies
- Representative of the cooperative farmers' associations
- Secondary wood products industry.

One of the most interesting aspects of this law is that it establishes a social forestry system comprised of Honduran farmers joined together into work groups, cooperatives or other types of associations, to take care of and protect the forests and promote their regeneration. COHDEFOR promotes the formation of these groups and determines the forest areas that they will manage, provides technical assistance, and enables a combination of agricultural and forestry practices.

COHDEFOR was recently reorganized and created the director of product development, social development, and eco-system protection. The Department for the Protection of Ecosystems is divided into sections for protected areas, watersheds and forest protection.

There are 12 regional offices[13] located in:

1. Atlántida: includes Olanchito, La Ceiba, Tela, Bonito Oriental and Saba
2. Biósfera de Río Plátano: includes La Colonia
3. Copán: includes Sta. Rosa de Copan, San Guisayote, Sta. Rita de Copan, Gracias-Lempira and Cerro Azúl
4. Comayagua: includes Siguatepeque, La Esperanza, Comayagua, Rancho Grande, La Paz, Lajas and Marcala
5. El Paraíso: includes El Paraíso, Danlí, Teupasenti, Villa Santa, Yuscaran, Guinope and Trojes
6. Francisco Morazán: includes Tegucigalpa, Guaimaca, Talanga and El Porvenir
7. La Mosquitia: includes Puerto Lempira, Mocoron, Rus-Rus, Ahuas and Cruta
8. Noroccidente: includes San Pedro Sula, Pinalejo y Macuelizo, Sierra de Omoa, Yojoa, San Luis and Santa Barbara
9. Olancho Este: includes Juticalpa, San Esteban, Catacamas, Gualaco, Culmi, and Esquipulas del Norte.

[12] Decree Number 199-83, as a reform to decree 103.
[13] COHDEFOR's Forestry Regions, available in Internet at: www.COHDEFOR.hn/regiones_forestales/

10. Olancho Oeste: includes Salamá, La Unión, Campamento, Guayape, Carrizal, and Jano
11. Yoro: includes Yoro, Agua Fría, Jocón and Morazan
12. Zona Sur: includes Choluteca, San Marcos de Colón and San Lorenzo

The current recently presented National Forest Program includes 4 components:

- Forest and product development
- Forest and community development
- Forest, water and environmental services.
- Forests and biodiversity [14]

There are institutional conflicts between COHDEFOR and INA because INA is granting property titles in protected areas. Other conflicts are between COHDEFOR and the municipalities because municipalities claim the right to manage fees and infractions for forestry violations.[15]

"There are many activities in the forest that are not regulated in the Law, for example the Law protects 150 meters on both sides of the watersheds, however the Law does not regulate deforestation in the zones of water production of these watersheds. In addition the implementation of forestry management plans does not require an EIA and although the Environmental Prosecutor's Office recommended the adoption of some mitigation measures, these measures are rarely implemented. There are no evaluations before or after the trees are cut to evaluate any negative impacts and ensure that the management techniques were appropriate. COHDEFOR only conducts a final evaluation based on the technical norms established in the management plan to review the number of trees that were cut, if the trees were in the management plan and the construction of roads. This review does not evaluate any environmental impact on watersheds, soil or biodiversity."[16]

[14] Luis Cortes, Director of Ecosystem Protection , COHDEFOR
[15] Excely Salazar, Chief of Community Development, Municipality Copan Ruinas
[16] Wilder Van Troi Pérez Rivera, COHDEFOR's Regional Office, Juticalpa, Olancho

List of Main Laws Related to Sustainable Forestry Management

Name of Law or Regulation	No. of Decree or Agreement	Publication Date in the Gazette (d/m/y)
Constitution of the Republic.	Decree No. 171-82	23-01-1982
Forced Expropriation Law	Decree No. 113-14	09-05-1914
Forestry Law	Decree No. 85-71	04-03-1971
Law for the Creation of COHDEFOR.	Decree No. 103-74	10-01-1974
Reform of the Decree No. 103.	Decree No. 199-83	25-11-1983
Cloud Forests Law	Decree No. 87-87	05-08-1987
Law for the Modernization of the Agriculture Sector	Decree No. 31-92	06-04-1992
General Environmental Law	Decree No. 104-93	30-06-1993
Incentives Law for Forestry Plantations, Reforestation and Forest Protection	Decree No. 163-93	29-03-1994
Law of the Nation Program for Forestry Plantations, Reforestation, Environment and Sustainable Development	Decree No. 323-98	29-03-1998
Special Law for Agricultural Investments and Creation of Rural Jobs	Decree No. 222-98	20-01-1999
General Forestry Regulation.	Decree No. 634-84	17-07-1984
Regulation on Forestry Issues of the Decree 31-92.	Decree No. 1039-93	20-07-1993
Regulation on Sanctions for Violations of the Forestry Law	Decree No. 1088-93	20-07-1993
Public Administration Reforms Law	Decree No. 218-96	30-12-1996
Law of the National Program for Rural Sustainable Development	Decree No. 12-00	05-05-2000

Source: Lic. Mario Noel Vallejo Larios. Consultant on Forestry and Environmental Law.

C. Protected Areas and Biodiversity[17]

Biodiversity management in Honduras has occurred primarily through the establishment (at the proposal, decree or resolution level), delineation, and preparation of plans for managing protected areas. Managing protected areas is the traditional conservation method for *in situ* biodiversity.

Declaring protected areas has been well known since the beginning of the 20th Century; however, it was not until the early 80's when a more stable process began. This process was reinforced in 1993 by the creation of the Honduran National System for Protected Areas (SINAPEH, its acronym in Spanish), and later consolidated in 1999 with the approval of the corresponding regulations. The legal foundation for this is contained in Article 36 of the General Environmental Law defining seven management categories. Currently there are 11 management categories, 8 of which refer to the forest as a conservation resource.

Article 36 of the General Environmental Law establishes the following as protected areas:

- Biosphere reserves
- National parks
- Wildlife refuges
- Natural monuments
- Biological reserves
- Anthropological reserves
- Insular areas
- Or other areas that may be established in the future

Three state secretaries share institutional responsibility:

- The Secretary of Natural Resources and the Environment (SERNA, its acronym in Spanish), created a Biodiversity Directorate for the purpose of issuing policies on biodiversity conservation.
- The Secretary of Agriculture with the Fish and Aquaculture Directorate (DIGEPESCA in Spanish), in charge of protecting and managing fish farms and coastal marine resources.
- The Honduran Tourism Institute (IHT in Spanish) within the Secretary of State Tourism Office (SECTUR in Spanish) whose function is to promote national tourism and conserve natural resources and ecological diversity. To this end a unit for environmental action was created.

In addition, those responsible for protected areas are:

- A semi-autonomous institution, COHDEFOR, whose mandate is the administration of protected and wildlife areas.

[17] Directives for the Sustainable Environmental Development of Honduras. 2002. Topic: Sustainable Management of Protected Areas and Biodiversity. No. 7. Tegucigalpa.

- The municipal authorities are mandated, as was previously stated, to conserve and monitor protecting, guarding and controlling the biological resources under their jurisdiction.

In 1987, Decree 87-87 was promulgated, which declares 36 protected areas in cloud forests, under the categories of national parks, wildlife refuges, and biological reserves.

No economic activity is permitted inside these areas. A "buffer zone" is defined as being a minimum of two kilometers wide where no human settlements are allowed, except for any that may be already existing, while hunting, cattle ranching, extensive exploitation, fires, clear cutting forests, mining, fishing, housing construction, and highways are not allowed. When the land use was previously changed, these areas are considered "especial use zones" which require a Management Plan for the use of its natural resources.

Legally, it is expected that each protected area will have a management plan. The primary conflicts are found in the so-called "buffer zone." It is not clear how large they should be and what the restrictions on productive activities that can be done are, which creates conflicts with the owners or tenants that do not understand the reach of the limitations on their property.

Since 1991, the responsibility on managing the wild flora and fauna were transferred to COHDEFOR, along with protecting and managing the wild areas and protected reserves.

In 1992, COHDEFOR, in using its new functions, established 23 protected areas. "Currently, biodiversity conservation is a responsibility shared by three State Secretariats: Natural Resources and Environment, Agriculture and Livestock and Tourism, as well as a semi-autonomous institution: COHDEFOR".[18] In 1993, the possibility opened up of the areas being managed by private individuals.[19] The organizations that manage these protected areas must follow and apply the protected area management plan, but when it comes to legal violations they must turn to the public authorities. Their relationship with other stakeholders is not clear, since they are also private properties, especially when it comes to regulating the activities in the buffer zones.

" There are conflicts among existing wildlife norms because there are no general regulations, only a few norms adopted through Presidential Agreements. For example, the Presidential Agreement 0001-90 prohibits the taking or sale of wildlife, but does not prohibit the possession of wildlife, which implies a prior taking or sale."[20]

[18] Directrices para el Desarrollo Ambiental Sustentable de Honduras, Area Temática: manejo Sustentable de Areas Protegidas y Biodiversidad No. 7, Tegucigalpa, junio 2002, p.5
[19] Agreement number 1039-93 of the by-laws to Title VI of Decree 31-92.
[20] Ricardo Steiner B., President, Board of Directors, Fundación Pico Bonito FUPNAPIB

a) Resolution on the Creation of the National Biodiversity Commission

In 1997 SERNA created a National Biodiversity Commission in Honduras, which is known as CONABIOH. This inter-institutional commission is comprised of all sectors: public, private, academic, and non-governmental organizations with advisory functions relative to biodiversity matters for the government and society.

b) Biosecurity Regulations with Emphasis on Transgenic Plants

The objective of these regulations issued by the Secretary of Agriculture in 1988[21] is to establish the general principles for regulating the use of genetically modified organisms, in view of their possible impact on human health, agricultural production, and the environment. Its main area of application is the vegetable kingdom since it refers to transgenic plants.

The National Agricultural Health Service (SENASA in Spanish) is housed within the Secretary of Agriculture and Livestock. This official organization has created an advisory group called the Committee on Agricultural Biosecurity. This committee establishes channels for coordinating and reporting its decisions to CONABIOH.

These regulations call for risk evaluation before release and trade, as a requirement for granting authorization.

Among the primary weaknesses identified in this field is that the DIBIO-SERNA, DIGEPESCA-SAG, and COHDEFOR[22] authorities lack the institutional capacity to fulfill their legal directives. Accordingly, the academic and municipal institutions must be strengthened.

There is a legal vacuum with regard to biodiversity regulations in general terms, not just with reference to in situ conservation. Furthermore, regulations on wildlife are still deficient.

Honduras has prepared its biodiversity strategy, but very little has been accomplished. Policies and regulations must be enforced and implement to achieve their creation objectives.

"The National Biodiversity Strategy contains the official government policies and strategies, but in the real world these policies and strategies are being neither fully implemented nor fully enforced. This is due, among other factors, to a lack of resources and the recent change in the government and governing officials. (…) Some people comment that Honduras is full of papers with strategies and policies, even laws and regulations, that make almost no difference to the real status of biodiversity, which

[21] Agreement no. 1570-98.
[22] Bustillo Pon, Jaime; "Biodiversity Assessment": USAID-Honduras Report, December 2002.

continues to decline. In other words, having such strategies and policies on paper is not a guarantee of biodiversity conservation in practice in the field."[23]

The National Biodiversity Strategy seeks participation by all the public institutions, by entities with related competences, by the academic sector (such as universities), and by civil society.

D. Legislation on Water Resources

Water resources in Honduras have been regulated by the health sector and the environmental sector, including the supply of drinking water, sanitary sewage systems and garbage disposal. Legislation in the water sector is quite broad and dispersed through various laws. "Traditionally this sector has been directly under the central government; however, as of 1990, with the new Municipality Law, a fresh dispute arose between the central government and the municipalities with regard to responsibilities related to this resource."[24]

A reformation and modernization process began in 1990, but it has been slow and incomplete. Among other issues, these reforms include promoting a new legal framework for the sector that will allow institutional changes and a better definition of sector policy.

a) Law on the Use of National Water

The 1927 Law on the Use of National Water[25] grants the state 'control over water and empowers it to regulate its use. The law also regulates procedures on water concessions or contracts.'

Specifically, the law grants the state "full, inalienable and permanent dominion over the waters in territorial seas (determined by international law), with beaches, coves, bays, ports and other shelters useful for fishing and navigation, as well as waters in lakes, estuaries, lagoons, rivers, and creeks" (Article 1). At the same time it includes "runoff from national lands and subterranean waters as well" (Article 2).

The law also gives the state 'dominion over waters that spring from and flow within the same estate; rainwater runoff through private property, and subterranean waters discovered on an estate by its owner' (Article 3).

Chapter III sets forth regulations for using state waters to service households, agriculture and manufacturing plants. "Every citizen may freely use the territorial seas, rivers, lakes, lagoons, inlets, coves, bays, and creeks for navigation, fishing, loading and unloading, anchorage and other similar acts in accordance with the law's stipulations" (Article 8).

[23] Ibidem, p. 21,22.
[24] UNCTAD, Regional Workshop for Experts on Environmental Goods and Services, Havana, Cuba, March 2003: Informe de Honduras
[25] Decree 137, published in the Official Gazette on August 8, 1927

Waters beyond their natural course that flow through uncovered canals, ditches or aqueducts 'may be used to manually extract water for domestic and manufacturing uses and for irrigating isolated plants. This right is limited when the source of water is on private land or the extraction jeopardizes the water concessionaire' (Article 10).

Every citizen may freely drill ordinary wells within their farms, as long as this does not deplete waters destined for existing private or public services. They must, however, comply with the distances established by law (Article 12).

The law states that national waters may be used for navigation and flotation in accordance with police laws and regulations (Article 14). In order to use national water, public and private companies must sign a contract with the government. "This contract may be extended and its duration will be determined in each individual case depending on the circumstances" (Article 19).

The following priorities have been established for water usage. The list establishes a priority order (highest priority is supply for general population and then the other uses in the order they are listed).

- 'Supply for the general population: when the normal flow rate for a given population is not more than 100 liters per day per person, of which 20 liters are potable water' (Article 29).
- 'Supply for railroads: The companies may drill ordinary wells, pumping stations or wells on land in the national domain' (Article 32).
- 'Irrigation: In order to build permanent dams for factories and to establish any kind of artificial method for extracting water for irrigation at a rate of 50 liters per second during three hours per day. To extract a greater quantity, application must be made to the Ministry of Agriculture' (Article 38).
- Coffee processing plants, watermills and other factories, hydraulic forces, ferries and floating bridges.

The construction of floating bridges or ferries 'for public use on non-navigable streams may only be authorized by the Ministry of Agriculture'. The contract will establish the tariffs for passage and other conditions for navigation and flotation (Article 57).

The use of national waters to generate electricity requires a contract with the government and the executive branch, which will establish the conditions and terms to be included (Article 62).

b) Health Code

The greatest advances have been produced in the area of basic health, with 79% of the population receiving water services for human consumption. Only 49% of the water consumed is disinfected in the system. The results from monitoring water quality in rural

aqueducts show that 89% of water sources are deficient as to bacteriological quality, as a result of the discharge of sewage and open-air defecation.[26]

The Health Code stipulates that designing, constructing and operating the entire water treatment system for human consumption will be regulated by standards established by the Secretary of Health. It also stipulates that the aqueduct system administrative authority, the Autonomous National System of Water and Sewage (SANAA) must periodically verify the system's sanitary conditions, monitor the conservation and control of the watershed and the supply source, as well as monitor compliance with cleanliness measures required to avoid contamination of subterranean water.

Sewage and run off must be dealt with adequately, using sanitary methods to avoid contamination. It also establishes the responsibility of real property owners to connect their system to eliminate excrement, sewage and wastewaters to public sanitation aqueducts or if this is not possible, they must construct their own sanitary treatment facilities for sewage disposal. Housing developments must establish their own system for sewage treatment when they are not near the public system. It is the responsibility of the Secretary of Health to issue regulations for managing and disposing of excrement, sewage, wastewaters, and runoff and for monitoring and providing technical control for the sewers and pertinent systems.

c) Legal Framework for Drinking Water and the Treatment Sector

The Legal Framework for Drinking Water and the Treatment Sector was approved by the National Congress of Honduras[27] amidst strong opposition from some political sectors, non-government organizations, and citizens. The main concern of these groups is the authority for local government to manage water services and that they may grant concessions to private companies after a plebiscite or referendum to determine the opinion of the community.

Article 2 of the law establishes the following objectives:

- 'Promote increased coverage of drinking water and treatment services.
- Ensure water quality and drinking characteristics, thus guaranteeing healthy consumption by the people.
- Promote citizen participation through administrative water boards and other community organizational methods in providing services, carrying out projects, and extending potable water and treatment systems'.

Supplying water for human consumption has priority over any other use of this resource. The law transfers the water systems and treatment systems operated SANAA to the respective municipal authorities (Article 3).

[26] Organización Panamericana para la Salud – Honduras: Informe sobre Salud 1999, available on the Internet at: www.paho-who.hn/resultad.htm#proteccion

[27] Through Decree No. 118-2003, published in the Official Gazette No. 30,207 of Wednesday, October 8, 2003

The law also creates the National Drinking Water and Treatment Board (CONASA in Spanish) for consulting, coordinating, formulating and managing national public policies on potable water and treatment.

This new organism will propose policies for approving drinking water and treatment centers, as well as develop strategies and national plans on potable water and health. It will work as the center for coordinating and concentrating activities for the diverse public and private institutions concerned with water sources and channeling economic resources.

Another institution to be created will be the "Potable Water and Treatment Regulatory Authority," a decentralized unit under the Secretary of the Interior created to regulate water services on a national level.

This unit will have the following responsibilities, among others:

- To monitor user rights as they relate to providing and charging for services when not resolved by the competent authorities.
- Mediate conflicts that may arise between municipalities and between municipalities and service providers and users through procedures established by law.

With regard to tariff regulation, the regulatory unit will be in charge of establishing criteria, methodology, procedures and formulas for calculating the costs of providing this service.

Water boards and community organizations will receive preference from the Municipalities when granting municipal authorization for operating potable water and treatment services in their respective communities. These boards will be granted legal standing by the executive branch and their administrative organization; functions and attributes will be established by the regulations for the current law.

There is some fear that prices will rise as water services become decentralized or under municipal control; in effect this will occur if the price currently paid does not cover the costs and maintenance of the service. In such cases, service will not be sustainable over time, as may already be seen in many communities. However, perhaps the most delicate topic would be the privatization of water services. Such fears are not unfounded, when we observe that other types of privatization in the country have not generated the expected benefits and are rejected by the general public.[28]

Since this law is to be applied nationally and, given the fact that there is great variety in the capacity of the 298 municipalities, the law must provide for different options that may arise, even contracts with independent operators, as long as the decision is made by the people through a plebiscite or referendum requiring a two-thirds' majority.

[28] Starkman, Moisés. Decentralization and Water Law, in "Honduras: Revista Internacional", November 11, 2002

The law also authorizes SANAA to discharge any personnel, whose functions under the new law become superfluous, paying them the respective severance and indemnification. All of these posts will be permanently cancelled and SANAA will not be able to hire personnel based thereupon.

List of Laws Related to Water Resources

Name of Law	Decree Number	Publication Date in La Gazette (d/m/y)
Law for the Use of National Waters	Decree 137	8/8/1927
Constitution Law of the National Company of Electric Energy	Decree-Law 48	27/2/1957
Law of the National Service of Water and Sewage	Decree 91	23 /5/1961
Health Code	Decree 65-91	6 /8/ 1991
Framework Law of the Drinking Water and Sanitation Sector	Decree 118-2003	8 /10/2003

E. Fisheries Law (Decree #154/59)

Among the most powerful environmentally related laws in Honduras is the fisheries law. This law is very proscriptive regarding the types of activities that may take place in coastal areas, and could be as important as the environmental law in terms of regulating tourism and infrastructure development.

The main objective of this law is the conservation and propagation of the fauna and flora of the rivers, lakes and oceans of the country. The law applies to all activities regarding extraction, conservation and use of the biological elements living in the waters. It has very important implications regarding the environmental performance of tourism operations. In a sense it makes all waters a type of protected area, including those that are officially designated as such.

Article 50 establishes that private owners are not allowed to build fences, buildings, "constructions" or grow crops within 50 meters from the beach and should allow enough space for fishing activities. Article 51 prohibits dumping of polluting substances in the oceans, rivers, creeks, lakes and other water bodies that might harm fisheries in general and reproduction areas in particular. And Article 52 prohibits cutting mangroves and other trees in the edges of rivers, and other sensitive areas that are habitat for fisheries and oysters.

These three articles taken together are perhaps the most stringent restrictions on the type of tourism development that can take place and on their operations. “These provisions could be very powerful instrument to encourage more sustainable, or at least more

responsible, tourism operations. It appears that in practice this law is rarely used to enforce environmental violations."[29]

DIGEPESCA is the office within the Secretariat of Agriculture responsible for: granting fishing permits, establishes fishing prohibitions and implement the fisheries law in coordination with SERNA. "However DIGEPESCA has little authority and limited resources to carry this responsibility or promote measure to protect fisheries from depletion."[30]

F. The Municipality Law (Decree 134-91)

Honduras has a population of 6.4 million and is divided into 18 departments and 298 municipalities. Municipalities receive a little over 2% of the annual national budget.[31]

In 1990 the new Municipality Law[32] introduced fiscal reform and increased the capacity of municipal authorities to collect and administer their own funds. It also called for the transfer of 5% of national tax income to the municipalities.

The Honduran Association of Municipalities (AMHON in Spanish), founded in 1960, has become increasingly important in the 90s because of their support in passing the new Municipality Law and in establishing a legislative committee to deal with matters related to local governments. The Autonomous Municipal Bank (BANMA in Spanish) is the principal state institution that provides credit and technical assistance to municipalities.

This law contains provisions that grant municipalities and communities a greater participation in defending, protecting and improving natural resources. The related articles include, among others, Articles 12, 13, 14, 25, 118, etc. These cover issues such as: ecological protection and the environment, promoting reforestation, rational use, natural resource usage, obtaining proprietary resources to conserve the environment, signing agreements for using and protecting natural resources, etc. At the same time, the law contains an addendum that specifies the form in which municipalities can obtain income from: licenses for using natural resources, rates for leasing municipal land to establish industries, tariffs on the commercial value of extracted resources, tariffs on production volumes, etc.

Article 12 of the law recognizes the autonomy of municipalities based on the following:

- Open elections of municipal authorities through direct and secret ballot;
- Unrestricted administration and decision making;
- The ability to obtain proprietary funds and invest them for the benefit of the municipality, with special attention to conserving the environment;

[29] Marco Tulio Sarmiento, Deputy Director DIGEPESCA
[30] Idem.
[31] Interamerican Development Bank, Red de Desarrollo Municipal, available on the Internet at: www.iadb.org/rdm/paises.cfm/paises_Honduras
[32] Decreee number 134-90 issued on October 29, 1990, and published in the Official Gazette, No. 26292 of November 19, 1990.

- Prepare, approve, carry out and manage its own budget;
- Planning, organizing and administering public municipal services;
- Create its own administrative structure and form of operation, in accordance with real factors and the needs of the municipality; and,
- Anything else that may be required in performing its duties as required under the Municipality Law.

This law establishes mandates for municipalities regarding constructing potable water systems, as well as their respective maintenance and administration (Article 13). This provision turns the municipalities into nearly exclusive service providers. The municipalities are also granted authority to sign contracts with public and private organizations for administering public services and local works as may be required and they are also granted the right to grant authorization to private companies that provide municipal services to recover their expenses and obtain a reasonable profit through appropriate charges that do not serve to prejudice municipal interests (Article 15).

Under the Law, municipalities may form associations of any kind among themselves or with other national or foreign authorities in order to fulfill their objectives and duties. To that end, they will require an affirmative vote from two-thirds of the city council members. Each association will issue the respective regulations and standards governing their operations. When permanent associations are involved, their income, duration and withdrawal will be voluntary (Article 20).

With regard to participation by the local population, the Law stipulates that neighbors within a municipality have rights and obligations. The following are their rights:

- To opt for municipal office either through election or appointment;
- Reside peaceably within municipal borders and not be worried about legal activities;
- Petition for reasons of a particular or general nature and receive a response, as well as file complaints against municipal actions, agreements or resolutions and limit their responsibility, as appropriate;
- Participate in investment programs and projects and be informed regarding municipal finances;
- Participate in the performing and developing local matters;
- Obtain an accounting report from the municipal council regarding its actions, not only in open council meetings but also through its representative, also directly; and,
- Other rights contained in the constitution of the republic and its by-laws (Article 24)

Members of the municipal council must comply with the following requirements.

- Be a citizen of Honduras, born in the municipality or with more than 5 years of consecutive residency.
- Be 18 years or older and be in full exercise of civil and political rights; and,
- Be able to read and write (Article 27).

Municipal council sessions must be public, although in exceptional cases, the municipal council may determine that they may be held in another fashion (Article 34).

The law stipulates that each municipality will have a municipal development council in an advisory capacity, comprised of a number of members equal to the number of council members. These advisors will be honorary and will be appointed by the municipal council from among the representatives of active community groups. This council will be presided by the mayor and members may be present at municipal council meetings with a right to be heard but without a vote (Article 48).

There will also be auxiliary mayors in neighborhoods, villages, and hamlets. Each of them will, in public assembly, select three candidates, of which the mayor who received the most votes in their voting district will become a member of then municipal council (Article 59).

The municipal council must respond immediately in open session to petitions regarding their actions submitted by those present and in the case of a particular and distinct action, they must reach a resolution within 2 weeks (Article 114). Furthermore, when resources so allow, municipalities must publish a municipal gazette, containing their most relevant resolutions, a budget summary, and the settlement and response to petitions for accounting reports. The municipal gazette will be published at least semi-annually and how it will be published will be subject to the municipality's economic capacity.

Although the purpose of decentralizing functions in favor of municipalities appears to be joint coordination between municipalities and the national government in areas related to protecting and conserving the environment, the Law is not clear with regard to how this should work in practice. This ambiguity in the governmental and municipal obligations and jurisdictions (which may include entities created under the General Environmental Law) has caused much confusion with regard to administrative functions and cases where there is an overlap and there are loopholes in administration. Neither the municipality, nor the commission is clear as to the cases in which the General Environmental Law has precedence over local mandates.

The Municipality of Tegucigalpa has achieved an important level of autonomy to "implement important environmental responsibilities, and enacted local environmental standards for drinking water, waste water discharges, noise levels and collect environmental fees to industries and commercial activities based on their total income."[33] However, "there are only a few municipalities in the country that have the capacity and resources to implement environmental responsibilities and provide services." [34]

"The Municipal Law gives authority to municipalities to manage natural resources. Municipalities state that they do have the authority and responsibility to grant permits for non-commercial activities, however the Forestry Law grants the authority to COHDEFOR." [35]

[33] Jonathan Lainez, Chief Environmental Management Unit, Municipality of Tegucigalpa
[34] Emelie Weitnauer, Chief Environmental Unit, IHT
[35] Ing. Santos Cruz, Chief Environmental Unit, Juticalpa, Olancho

G. The National Contingency Law

In 1990, the law creating the Permanent Commission for Contingencies (COPECO in Spanish)[36] took effect, containing new and positive issues that detail the contingency limits, as well as the purposes and functions of the national organism created therein.

COPECO´s fundamental objective is to 'adopt policies and measures aimed at serving the population, rehabilitating and reconstructing areas damaged by natural phenomena that affect the economic activity and the wellbeing of the population, in addition to scheduling and developing diverse activities to prevent negative consequences in areas where such phenomena may occur'.[37]

COPECO's vision is to prevent and not wait until emergencies occur to begin to act through campaigns to warn against the dangers presented by natural phenomena.

COPECO's main responsibility is to help mitigate the impact of natural disasters and provide emergency response. COPECO works in coordination with 40 institutions (governmental and non-governmental) including the Ministry of Environment, Agriculture, COHDEFOR, and ENEE among others, in activities related to risk management. Funding for COPECO comes mainly from international assistance and a small percentage from the national budget and support from other national institutions.

[36] Decree Number 9-90-E issued on 12/12/1990 (Official Gazette no.26348 of January 25, 1991)
[37] Title II of the Permanent Commission on Contingencies, Creation, Headquarters and Goals Article 0005

List of the Principal Institutions Participating in Risk Management[38]

Institution	Activities	Facilities
Permanent Contingency Committee (COPECO)	• Coordinate the system's member institutions • Monitor river levels • Hurricane follow-up • Monitor for seismic movement • Compile information sent by regional offices • Process information and create maps based on the statistics	• Technical staff • Regional radio communications system • Information system management functioning • Integrate the subject of risk management into the school curriculum • Create early warning projects
National Geographic Institute (IGN)	• Create thematic maps related to disasters and risks • Geo-referencing • Digitalization • Database creation	• Technical staff • Trained personnel • Basic mapping availability in analog format • Thematic maps at different scales • Aerial photography for different years at different scales • Set up GPS (Geographic Positioning System) • Photo grammatical restitution
National Meteorological Service (SMN)	• Weather forecasts (short, medium, and long term) • Meteorological data banks for synoptic and rain gauge stations (rain, wind, temperature, evaporation, barometric pressure, relative humidity, cloud cover, etc) • Data banks for synoptic meteorological phenomena	• Technical staff • Meteorological communications channels • Programs for creating forecasts, numeric models, and satellite imaging.
SERNA 's Land Planning Office	• Rick management. Implementation of the National Land Planning Program • Infrastructure • Urbanism • Physical media: floods, landslides, and erosion • Population and economics • Current, intermediate, and future scenarios	• Landslide and flood maps • Prevention in low watersheds, working in the high and medium regions
Honduran Corporation for Forest Development (COHDEFOR)	• Forest fires • Forest infestations • Training private community groups and institutions on prevention and control • Assistance in reforestation programs	• Structure at the national level • 40 observation towers located at strategic points • Geographic Information Department • System for integrating with forest owners and municipal corporations

[38] Source: International Institute for Geo-Information Science and Earth Observation. "Informe: Análisis de Necesidades de Capacitación – Proyecto RAP-CA" (Report: Analysis of Training Needs – the RAP-CA Project) **Honduras** – February 2003 available on the Internet at: www.itc.nl/external/unesco-rapca/additions/Informe%20taller%20final%20UNESCO%20RAPCA.pdf

	for hydrographic micro-water sheds.	• Community forestry projects • Training programs on forest fire risk • Radio communications system at the national level • Technical staff
The National Electrical Energy Company (ENEE)	• Manage and track the Francisco Morazan Dam and the rest of the country • Maintain and control electric energy in case of a disaster • Record damage assessment after the event • Prepare a hydrological forecast on an annual basis	• Radio communications system • Close to 108 offices at the national level • Establish small dam to retain water and produce energy • Automatic telemetric facilities for recording flood information
Secretariat of Government and Justice	• Compile existing information on natural disasters • Make information available to local authorities • Maintain a record of geographic databases and maps that have been created relating to natural disasters • Include the natural disaster variable in the land planning methodology at the different levels: national, regional, departmental, and local	• 4 computers (to handle geographic information) • Software in the acquisition process
Geographic Information Center at the Central American Technological University (UNITEC – CIGEO)	• Map studies about soil uplifting • Plant coverage • Current land use • Determine land use conflicts • Land use planning • Provide an appropriate infrastructure for managing and exchanging information • Spatial	• Facilities in Tegucigalpa and San Pedro Sula • Internet services (servers) • Service user network • Sufficient infrastructure / training centers with suitable staff
ZAMORANO (Pan-American Agricultural School)	• Current soil use • Cliffs • Fire mapping and fire attention committee • Water • Micro-water sheds, flood prevention	• Geographic information systems unit • Work unit • Laboratory • Digitalizers, scanners, GPS

The president of COPECO may designate representatives from public and private institutions to form part of the commission if in his judgment he may consider them necessary for the commission to function better.

COPECO is the competent authority that provides the transmission frequencies for the Early Warning System (SAT in Spanish) and maintains an inventory of available resources from the different national and international organizations that support these

systems. The majority of systems in Honduras are warning systems against flooding; very few have been created for seismic and earthquake activities. There are some in the southern areas of the country, which go into action when drought conditions occur. After Hurricane Mitch international aid was greatly stimulated and NGOs cooperated with the country to install programs to reduce vulnerability and install local warning systems. [39]

At the Municipal level COPECO coordinates its efforts with the Municipal Emergency Committees (CODEM) and the Local Emergency Committees (CODEL) that receive institutional support from the Fire Department, National Army, National Police and Red Cross. The effectiveness of these committees depends on the financial and human resource capacity of each Municipality. Decentralized and financially independent Municipalities such as Tegucigalpa have a decentralized Municipal Emergency Committee that manages their own budget (allocated by the Municipality) and are administered by a Board of Directors that includes representatives from different institutions. They provide response to eventual risks and emergencies as well as to provide training on prevention measures to the Local Emergency Committees in neighborhoods, colonies and small communities.

Municipalities with limited financial resources receive direct support from COPECO that provides emergency response in coordination with other governmental institutions.

Local participants are guaranteed government support (radio communication frequencies, technicians, logistics). Local participants will participate in national decision-making. When an emergency arises, there will be better information mechanisms and liaison between members of government institutions in the national emergency system and local organizations.[40]

The two major environmental problems in Honduras are deforestation and deterioration of watersheds. COPECO conducts serious efforts to reduce vulnerability, however, weak enforcement and compliance of environmental laws increases environmental problems. For example, the Land Use Law prohibits any construction of infrastructure on steep land; however, there is an increase of human settlements in these vulnerable areas. "Specifically, in Tegucigalpa, the settlement El Reparto is located in a steep hill that is vulnerable to landslides, nonetheless their inhabitants do not have means to move to another land or receive any support from the government. In this specific situation, COPECO works in coordination with the community to provide them with emergency and evacuation training."[41]

H. Law for the Promotion and Development of Public Works and National Infrastructure

This law is important to the development of infrastructure 1) directly when the state contracts for construction services and 2) indirectly when the state contracts for provision

[39] César Aníbal Moradel and Oscar René Alcántara. Integration of Local Warning Systems in the National Structure, Presented at the Second Conference on Early Warning, Bonn, April 2003.
[40] Ibid.
[41] Luis Gómez, Commisioner, COPECO

of infrastructure. The law itself is quite straightforward. It gives the State authority to contract for services and concessions, and states the types of activities and general obligations of the State and contractors. Article 3 requires that public services should attend to the sustainable use of natural resources. Article 9 includes environmental regulations among the list of required provisions in contracts for government services. Article 14 also requires that municipalities consider environmental impacts in their contracts and concessions, and consult with SERNA in contracting for services.

Article 30 states that this law does not apply to municipalities and other institutions that have their own regulatory framework. This article could contribute to the confusion and overlap and under lap between the State and the municipalities.

It is important to recognize that, in addition to this law, infrastructure development will depend generally on the security and transparency of the contracting environment in Honduras and on the efficiency of the legal system as a whole. For example, investors will be reluctant to invest if they fear under the table dealing or lack of security in the legal system to fairly resolve disputes.

I. General Law on Land Use and Human Settlements for Sustainable Development

The law creates a series of zoning councils at the various governmental levels: national, state, and municipal, and gives them general responsibilities for the development and policy making decisions about land use in their jurisdiction. The law requires that authorities at all levels to develop land use policy in accordance with environmental characteristics, and in accordance with natural ecological boundaries (articles 17 and 18).

The duties/activities of the zoning councils include defining special territories, issuing certificates of soil use permits, defining and delimiting boundaries and creating areas of joint responsibility with other entities. Municipalities are supposed to develop plans for "the ordering of human settlements that determine among other things: green belts, measures for environmental protection areas for treatment of solid and liquid waste, and pollution standards, and zoning rules" (article 35).

Article 21 grants the executive branch the power to declare areas under special regimes when the use is of national strategic importance. These can include critical areas for treatment, recovery and environmental protection, biological reserves, historical, cultural and archaeological sites, and others. Each municipality is supposed to have a development plan that includes plans for public and private investment improvements in production, provision of services, provision of infrastructure, and environmental improvement (article 24). Only modest progress has been made by a few municipalities in the North Coast area, though it appears that most municipalities are working in that direction and have at least rudimentary plans.

Municipalities are required to register declarations of expansion of human settlement (land use permits) with the departmental public register within 30 days after approval. Any interested person may challenge agreements or resolutions for expansion of human settlements within 60 days of their approval, and they are not considered final, nor can building permits be issued, until after the 60 day period (article 27). Permit decisions should be made within 30 days, and if no decision is made, it will be considered denied (article 29).

Articles 30 and 31 require municipalities to create development plans for human settlements, with priority given to urban centers and metropolitan areas, followed by rural areas and human settlements with special historical or tourist importance and finally areas that have suffered damage for disasters. Article 63 states that regulation of rules of environmental performance will regulate activities in conformity with the General Environmental Law and its regulations.

The law provides the municipalities with financing from the Central Government for development and also allows them to create incentives for development in accordance with the sustainable use of natural resources.

Title 7 contains provisions regarding infractions of the zoning law and dispute resolution.

Article 89 states that in the event of conflict with other laws, this law will take priority except for the Ley General de la Administración Pública. This priority of laws appears to be true at this time, meaning that the zoning law currently trumps other environmental laws. However, it is important to note that this type of provision is common, and in practice transitory. In accepted legal theory there are two relevant rules for interpreting conflicts between laws. The first is that 'a specific law prevails over a general law.' This means, that absent provisions to the contrary, a water law, for example, would hold priority in questions of water use over the zoning law. The second rule is that 'a more recent law prevails over an older one.' In the same case, a new water law would take priority in water related matters over the zoning law, even though the zoning law claims to have priority.

This law provides a very strong framework to help ensure the environmental soundness of land use decisions. However, it is less clear if much of it can actually be implemented in the country. Given the lack of trained planners in the region, and a greater number of variables to be considered, it is unreasonable to assume that much zoning is actually taking place. The law also seems to have a great deal of overlap of responsibilities between national, departmental and municipal authorities. What is missing is a clear set of procedures for making zoning and land use decisions. Article 35 (15) includes zoning rules among a long list of other things that should be included in the "Plan de Ordenamiento de los Asentamientos Humanos." In practice, the issue of procedures is critically important for zoning decisions. This law is very unclear about how to go about getting a permit, or about how to challenge a zoning decision, and this lack of clarity could mean that there is a great deal of discretion left to municipal officials. High levels of discretion are more likely to discourage private investment.

Another potential shortcoming of this law is that it does not clearly provide for a central property registry that can be easily accessed. This makes titles to land very insecure, and without a system of title insurance investors must be willing to take significant risks in buying and developing land. Lack of a well-function land registration system may also contribute to land use violations, encroachment particularly on natural and protected areas, and excess conflict over land rights.

J. Land Use Planning Law (Decree # 180-2003)[42]

The objective of the law is to provide a national policy on land use planning as part of the national planning that promotes integrated, strategic and efficient management of natural, human and technical resources in the country. The law also promotes the implementation of policies, strategies and development plans oriented toward sustainable development (article 1).

The law defines land use planning as "an administrative instrument to strategically manage the relationship between human and natural resources with the physical environment seeking integrated and balanced use in the entire country to promote growth of the economy" (article 2).

The Law creates the National Council on Land Use Planning (CONOT in Spanish) as a consultative and advisory office responsible to propose, coordinate and follow up land use strategies and plans, as well as to promote initiatives to implement programs, projects and actions on land use planning (article 9). The National Council on Land Use Planning will be assigned to the Secretariat of Governance and Justice (article 11).

The members of the National Council on Land Use Planning include:

- The Secretary of State for Governance and Justice, who serves as president
- The Secretary of State for Natural Resources and Environment
- The Secretary of State for Agriculture and Livestock
- The Secretary of State for Education
- The Secretary of State for Health
- The Secretary of State for Public Works, Transportation and Housing
- The Secretary of State for Finances
- The Director-Minister of the National Agrarian Institute (INA)
- A representative from the Permanent Commission on Contingencies (COPECO)
- A representative from the Honduran Association of Municipalities (AMHON)
- A representative of the ethnic groups of Honduras
- A representative of the peasants organizations
- A representative of the labor organizations

[42] Approved on October 30, 2003

- A representative of Federation of “Patronatos”
- A representative of the Professional Associations
- A representative of the Honduran Council of Private Corporations (COHEP)
- A representative of Women organizations
- Representative of Youth organizations
- A representative of universities
- A representative of each of the legally registered Political Parties

CONOT will be responsible for implementing and enforcing this Law, promoting legal and technical proposals and initiatives and coordinating with the President and the Council of Ministers (article 12). CONOT will be assisted by and operations office, the Executive Committee on Land Use Planning (CEOT in Spanish), that will be responsible for implementing and following up the actions of CONOT (article 14).

The Law also creates Department Councils of Land Use Planning in each Department (Province), which will be coordinated by the Department Mayor (article 16). The Department Councils will coordinate and implement local policies and strategies of land use planning; establish mechanism for evaluation and follow up of land use plans; establish planning strategies of the Municipalities within its Department; and implement actions requested by CONOT.

The Law establishes different organization levels including national, department and municipal. Municipalities have authority to enact local norms to regulate land use planning such as zoning norms, land use rules, construction norms, and norms for subdividing properties (article 28). Municipalities have autonomy to make their decisions within their jurisdiction.

In order to avoid institutional conflicts the Law establishes that all government secretariats will coordinate efforts, will make joint decisions will and will provide financial, technical or administrative support to other secretariats when necessary (article 29).

In case of institutional conflicts, the law provides the following mechanisms: conciliation and arbitration; administrative action; legal action or legislative interpretation.
In addition the Law establishes public participation in decision-making related to land use planning through any institutional office, public hearings, consultation meetings and any other mechanism stated in the Municipality Law (articles 35 and 36).

The land use planning instruments established in the law include:

- National Land Use Planning: general norms on land use, management of natural resources and use of the territory.
- Regional Land Use Planning: to guide activities in the economic, environmental and social sectors.
- Municipal Land Use Planning: to guide activities in the economic, environmental and social sectors at the Municipal level.
- Land Use Planning for areas under Special Regimes (article 46).

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In order to create a national information system and a consolidated public registry, the Law requires that government institutions provide all land use information they have in their data bases including statistics, registrars, legislation local norms, plans (article 52).

This law is very recent and it is too early to analyze its impact. However, the law creates several new councils with representatives from most governmental secretariats and new responsibilities without providing any new financial resources for implementing the law. The law also lacks specific mechanisms for its implementation and will require additional regulations to make it effective.

3. LIST OF GOVERNMENTAL INSTITUTIONS AND THEIR FIELD OF ACTION WITH REGARD TO APPLYING AND COMPLYING WITH THE LAW.

A. Secretary of Natural Resources and the Environment

The Secretary of Natural Resources and the Environment (SERNA)[43] is responsible for implementing and enforcing environmental legislation in Honduras. It is also responsible for developing, coordinating and monitoring compliance with national environmental policies, to ensure that policies are followed, and that there is coordination between institutions on environmental matters, energy and mining development. There are conflicts in both SERNA's and COHDEFOR's mandates that require both management or monitoring of environment while obtaining incoming (through energy or mining concessions or timber concessions) at the same time.

The functions of the Secretary are stipulated in the Regulations to the General Environmental Law,[44] which include:

- Ensure strict compliance with national legislation on the environment and with international treaties and conventions signed by Honduras relative to natural resources and the environment.
- Promote administrative and judicial actions that originate from infractions or crimes committed against natural resources and the environment and lack of compliance with obligations in favor of the state relating to this matter.
- Issue opinions on environmental matters, prior to authorizing, awarding, and issuing operating permits to production or commercial companies and to carry out public or private projects.
- Represent the government of Honduras with national and international organizations regarding environmental matters (Article 11).

[43] Created by Decree 218-96 of December 1996
[44] Resolution 109-93 of December1993

B. Secretary of Agriculture and Livestock

The Secretary of Agriculture and Livestock is responsible for directing and coordinating the public agricultural sector. Its principle function is to formulate and follow up on compliance with development policies for agricultural and forestry activities.

The Secretary of Agriculture has the responsibility to issue resolutions regarding declaring protected areas and executive resolutions that identify protected species, animals that may be hunted, moratoriums, hunting seasons, etc. The Secretary of Agriculture also must issue executive resolutions regarding moratoriums and technical criteria on fishing and collecting specific marine species.

The General Fish and Aquaculture Directorate (DIGEPESCA in Spanish) is a department of the Office of the Secretary of Agriculture and Livestock which is responsible for establishing standards for promoting and protecting marine and land-bound fishing resources as well as fish farming, research, and general fishing policies.

C. The Secretary of Health

The Secretary of Health is responsible for determining technical standards with regard to permitted amounts of ground level contaminants and emissions, and for issuing guidelines on permissible levels of sound, vibrations, smoke, and particles (Articles 60 and 61 of the General Environmental Law). This position is also in charge of granting authorizations for manufacturing, storing, importing, trading, transporting, using and disposing of toxic or dangerous substances.

The Secretary of Health, in conjunction with the Secretary of Natural Resources and the Secretary of National Defense, is responsible for treating continental and marine waters.

The Environmental Treatment Directorate is part of the Secretary of Health Office and its functions are to monitor compliance with standards to ensure that the environment is sufficiently healthy and contaminant free for the health of the people, to eradicate all diseases that originate in the air, water and dangerous substances and to control industrial and pharmaceutical establishments, as well as those selling food.

D. The Secretary of National Defense and Public Security

The Secretary of National Defense and Public Security, in coordination with the Secretary of Public Health and Natural Resources, is responsible for controlling the management and monitoring of coastal and continental waters. The Secretary of Defense has trained personnel, technical capacity and resources to conduct these responsibilities.

E. The Honduran Forest Development Corporation

The Honduran Forest Development Corporation[45] (COHDEFOR, or simply COHDEFOR in Spanish) is a semi-autonomos entity, with an oversight board comprised of various institutions in the Central Government and the private sector. COHDEFOR is responsible for implementing national forestry policies and monitoring the use of natural resources, at the same time guaranteeing their protection and conservation.

COHDEFOR is the institution established by law to administer, implement the nations forestry law. It is a semi-autonomous institution that reports to the Secretary of Agriculture and Livestock (SAG). As the lead cabinet agency for forestry, SAG is responsible for establishing forestry policy.

COHDEFOR currently has over 400 employees and operates from their headquarters in Tegucigalpa and through 12 regional offices throughout the country.

It is governed by an 11 member Board of Directors. The President of the Republic is the Chair. According to the COHDEFOR Law (as modified by decree 33-92 in 1974) the Board is comprised of: the President of the Republic; Ministry's of Environment and Natural Resources, Agriculture and Livestock, Economy and Trade, Finance, Defense; Executive Director of the Economic Planning Council (no longer exists); Director of the National Agrarian Institute, a representative of the primary forestry sector (AMADHO), a representative from the secondary forestry sector (ANETRAMA), a representative of the campesino forestry associations and cooperatives (FEHCAFOR), and COHDEFOR (non-voting member).[46]

F. Special Environmental Prosecutor

The Office of the Environmental Prosecutor was created in 1994 as a professional, specialized and independent office from all branches of the Government. Its main responsibility is to investigate crimes and carry out all criminal public actions. The objective of the Office is to "collaborate with the protection of the environment, ecosystems, minority ethnic groups, preserve the archaeological and cultural patrimony and any other collective interest."[47]. The Attorney General, who is elected by the National Congress, is the highest authority of the Office of the Environmental Prosecutor.

The Special Environmental Prosecutor is responsible for defending the interests of society when the dispositions on natural resources and the environment are infringed and for filing lawsuits in relevant cases.

The priority lines of action for filing complaints include

[45] Created through Law/Decree 103 of January 1974
[46] COHDEFOR, Forestry Laws Related to the Sector, available in Internet at: www:COHDEFOR.hn/leyes_forestales
[47] Decree Number 228-93, Law of the Prosecutor's Office.

- Forest violations
- Contamination violations
- Crimes related to water sources and protected areas

The General Environmental Law includes a chapter with environmental crimes that includes the following crimes:

- Emit or discharge pollutant into the atmosphere
- Discharge hazardous pollutants into the oceans
- Manufacture, store, import or trade toxic or pollutant substances.

These crimes are sanctioned with 3 to 10 years of jail.

Crimes against natural resources were defined as administrative infractions and are sanctioned with fees and other administrative measures.

The Criminal Code also includes as environmental crimes the following: water pollution, appropriation of public goods, change of river course and environmental harm. The new Criminal Code included a chapter on environmental crimes, however this chapter was annulled after the law entered into force.

"Congress annulled the provisions on environmental crime from the Criminal Code only two months after its approval. We need to apply other laws to trial criminal cases or use other similar provisions from the Criminal Code. For example, in the case of illegal logging, we prosecute the violators for the crime of 'providing false information to a government official'"[48].

[48] Mario Chinchilla, Environmental Prosecutor.

List of Main State Secretariats with Environmental Responsibilities

Name of Secretariat	Legal Framework	Responsibility
Secretariat of Natural Resources and Environment	Decree 218-96 of December, 1996	• Implement and enforce environmental laws including those in protected areas. • Develop, coordinate and monitor compliance with environmental laws and policies. • Energy and Mining Development • Issuing and monitoring implementation of environmental licenses
Secretariat of Agriculture and Livestock	Law for the Modernization of the Agriculture Sector	• Direct and coordinate activities in the public agriculture sector; • Develop and monitor compliance with development policies on agricultural and forestry activities. • Oversight on marine resources – commercial and non-commercial, including implementation of CITES in marine areas
Secretariat of Public Health	Health Code	• Conservation of the environment to ensure protection of human health.
Secretariat of National Defense and Public Security	General Environmental Law	• Exercise control over management of coastal and continental waters. • Provide support to some DIGEPESCA's actions within the security interests of the country

List of Main Decentralized Institutions with Environmental Responsibilities

Name of Institution	Legal Framework	Responsibility
Honduran Corporation for Forestry Development (COHDEFOR)	Decree-Law 103 of January, 1974	• Maximize the use of forestry resources; • Ensure protection, improvement, conservation and increase of forestry resources; • Generate resources to fund national forestry programs: • Management of Protected Areas – including management of watersheds and wildlife; • Management of National Forests
Honduran Tourism Institute (IHT)	Decree 103-93 of July, 1993	• Implement environmental laws related to tourism activities including: Law on Declaration, Planning and Development of Tourisms Zones, law for the Acquisition of Urban Estate in areas restricted by Article 107 of the Constitution, and other tourism laws.
Autonomous National Service of Water and Sewage (SANAA)	Decree 91 of April, 1961 and Decree 155 of November, 1974	• Promote the development of public services for drinking water, sanitation sewage and aqueducts.
National Electric Power Company (ENEE)	Decree 48 of February, 1957	• Promote electricity development on the country; • Conservation of watersheds; • Grant permits for energy generation from water, wind and biomass sources; • In coordination with SERNA develop the energy plan and issue licenses for energy activities; • Ensure precaution measures to prevent risks from thermal energy production.
National Agrarian Institute (INA)	Decree 69 of March, 1961	• Promote the agrarian reform to convert large estate and minifundio into a system of property and possession of land that ensures social justice and increase production of the agriculture sector.

4. PROJECTS TO REFORM THE LAW

A. Forest Resources

During the last five years there has been much discussion in Honduras about the need to reform the Forestry Law. Diverse sectors working together have tried to put together a bill that will fulfill the necessities identified in this field.[49] The National Congress has reached the level of second debate on a project, which, according to the Forestry Forum, comprised of 19 organizations, does not include discussions and work to date, but rather favors industrial use of timber without establishing adequate responsibility in case of infringement.[50] It is difficult to determine how many versions have been discussed since then, but the following are two of the most commonly discussed versions. The last one has been approved at the level of second debate, but as of the reading of references for the second proposal, it is possible to follow the evolution of thought on the topic.

a) Forestry Law Bill, Rural Areas Administration Project (PAAR Project 2000), January 2002

The PAAR Project prepared a "Preliminary Forestry Law Project" in January 2000. This proposal is geared toward restructuring administrative and supervisory responsibilities for forests on public and private land, protecting fauna, and managing protected areas.

This proposed law postulated the creation of a semi-autonomous "National Forest Service" under the authority of the Ministry of Agriculture and Cattle Ranching. This unit would also be responsible for coordinating and supervising the National System of Protected Areas, including designating new protected areas (in coordination with the SERNA) and establishing special municipal parks and garden areas for multiple uses (Article 83). The Service would be formally in charge of developing and implementing management plans for parks and protected areas (Article 24). It would also be authorized to charge admission fees to parks and protected areas (Article 27) and to sign contracts with public, municipal or private organizations to manage protected areas or to share the administrative responsibility with the National Forest Service (Article 104).

This bill does not taken into consideration many important issues related to managing national parks and protected areas. Perhaps the most worrisome aspect of this bill, as well as the following bills (including the version currently in National Congress), is that there are no specific provisions on the management regime for marine parks that are significantly different from terrestrial ones. The proposed law does not do much toward consolidating the legal foundation for delegating responsibility for the administration of parks to private organizations. For example, the law does not authorize contracts, nor does it delineate responsibilities such as supervision, charging fees, managing buffer

[49] "Honduras has turned into a country of consensus," Benjamín Bográn, Executive Director, COHEP.

[50] The Forestry Forum is comprised of: Pastoral Social Cáritas, ICADE, ACAN, COCOCH, CONPAH, FITH, ACOBODE-BTA, MAO, ANAFAE, FECAFOR, CODDEFFAGOLF, PROBOSQUE, COFADEH, FIAN Honduras, ASJ, EDUCAFORA, ADEPES, APACAL-BTA, and ADERH.

zones, or other critical issues that should be contained in the legislation in order to provide greater stability to the system in the long term. In addition, the clauses in the proposed law regarding sanctions do not include poaching, extracting or destroying endangered species, nor do they clearly deal with damages to natural resources.

b) Forestry Bill on Protected Areas and Wildlife, May 2004 version

This bill attempts to regulate three very important aspects of conservation: forest resources, protected areas, and wildlife. It is somewhat ambitious in trying to cover conservation and sustainable use of these resources in a single legal instrument. The result is that the regulations on protected areas and wildlife are insufficient and have serious conceptual problems, which will affect the future application of the law.

The principal problems relate to:

1. Conceptual problems.
2. Institutional conflicts
3. Ambiguity and unnecessary complexities

1. Conceptual Problems.

The definition of forest areas is very broad. The declaration of forestry land use requires defining a methodology for classifying soil use and zoning in accordance with that use – indispensable tools to be able to apply restrictions and incentives in line with this declaration.

Included within the term "forest sector" are those who perform activities related to the rational and sustainable management of forest resources, protected areas and wildlife. Forest resources and ecosystems are part of biodiversity according to the definition by the Biological Diversity Agreement signed and ratified by Honduras.

According to the Convention on Biological Diversity in its article 2:
"Biological diversity means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and ecosystems."

The proposed approach of including biodiversity as a sub-category in the Forest Wildlife, Forestry and Protected Areas is fundamentally flawed. Biodiversity is a much broader concept that includes terrestrial and aquatic ecosystems, as well as wild and domestic resources. The mechanisms to address biodiversity in Honduras need to have an overarching approach that encompasses forestry, wildlife and protected areas, but also agriculture, intellectual property rights, access to genetic information, among others. In this sense, forestry and wildlife resources are elements of biodiversity that must be regulated in a different way than protected areas, which are instruments for *in situ* conservation.

Even within the scope of the proposed law, the approach to biodiversity, as expressed in only a dozen articles is not nearly sufficient to address the broad-reaching concerns of a complex issue in one of the most biologically diverse countries in the world. At a minimum, a detailed law decree or regulation will be needed for biodiversity in the forestry sector, an additional one for biodiversity in protected areas, and an additional one for biodiversity in wildlife management. While possible, it seems an inadequate and inefficient approach. The country will need an umbrella biodiversity law to effectively address the issue.

Therefore, it is not convenient, to regulate in the same law such important aspects of conservation and development that should be addressed in different regulations. The current bill provides a strong protection to forestry resources but in not sufficient for protected areas and wildlife.

The definition of ecological easement is incorrect. An easement according to the Civil Code is a lien imposed on a property for the use of property having a different owner. In fact, the restricted property may voluntarily subject itself to certain environmental restrictions, as for example, not using a forest that encloses the nesting grounds for a species that comes from the dominant property. Precisely because of their very nature, easements are voluntary, they have been used for ecological purposes, but it is a concept that has been established and regulated by the Civil Code.

2. Institutional Conflicts.

The bill states that COHDEFOR is an autonomous institution that defines its own policies and has an independent budget and organizational structure. This bill establishes a budget that must be established within the General Budget for Expenses and Income of the Republic and establishes a series of funds for financing investment programs for using forests, protected areas and wildlife, for protecting micro-basins, and for reforestation programs.

Among the COHDEFOR's currently recognized strengths are its regional offices, and its decentralized structure, however the bill does not include as part of COHDEFOR's functions the establishment of additional regional offices and the description of their responsibilities.

In the present Bill the structure of the Board of Directors has been a subject for debate. It has 14 members: 5 are state organizations, 3 are from the industrial and private sector, 1 is professional, 1 is municipal, and 4 are non-governmental organizations. The absence of SANAA is worthy of note. The Bill proposes that the Secretary of Agriculture and Livestock presides over the Board and has the right of double vote in case of tight decisions, which reflects the orientation of the bill more toward productivity instead of conservation.

This project creates duplications and institutional conflict such as the establishment of a list of the inalienable public forest patrimony, which defines a technical-administrative

public record, within which state forest areas will be registered with COHDEFOR. In Congress there is a bill of law for creating a Property Institute where the Property Registry, the Official Land Office, and the Intellectual Property Registry will be joined together. Honduras has made great strides toward guaranteeing legal security in property ownership and the information should be centralized[51] (Articles 48 and thereafter).

A "Board of Forest Transparency" is to be created to ensure monitoring and evaluating of how the law is applied, comprised of a representative of the High Accounting Tribunal, the Public Ministry, the Professional Forest Association, NGOs, AMHON and logging companies. Nevertheless, many of these are in charge of applying the law, mainly the Prosecutor's Office that is responsible for investigating environmental crimes or to establish a "comptroller office" in the Professional Forest Association to control the professional activities of forestry regents. They cannot be both "judge and jury;" they should retain their independence as the Public Ministry to be able to eventually exercise their judicial prerogatives against representatives of the institution or any member of the Board of Forest Transparency, since its responsibility is to ensure compliance with the Law of the Government, organizations and public in general.

Other countries are using other instruments such as independent forestry audits, regional forestry committees at the local level that include participation of municipal authorities and non-governmental organizations that are not involved in forestry activities. The indicators to evaluate an effective implementation of the law are: independence, transparency, access to information, and protection of witness identity, especially to enforce necessary means to correct procedures and eliminate corruption.

3. Unnecessary Ambiguity and Complexity.

Article 54 stipulates that protected areas will be declared by the executive branch and that the National Congress must ratify this declaration. This procedure is unjustified when dealing with creating a protected area; the declaratory of a protected area can be done through a Presidential Decree, without participation of Congress, which makes the procedure longer and more complex. The Western Hemisphere Agreement requires the participation of the Legislative Branch for the removal or reduction of protected areas, to prevent encroachment of protected areas for economic and political interests, but not for their creation.

One issue, which has raised certain sensitivities in the civil society, is the establishment of "forest management contracts" on state lands that can extend from the mid-term, seven years, to the long term, more than seven years. The amount of the guarantee and the supervision methods are relegated to the regulations.

[51] "The bill of law for the Property Institute creates a new department that joins the Registry, the Land Office, the National Geographical Institute, the Mercantile and Intellectual Property Registry," Edgardo Raúl Derbes, Land Administration Program of Honduras, PATH.

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Article 77 states that non-commercial uses do not require a management plan. Within this category are included those trees which must be logged for building public infrastructure, such as roads, bridges, aqueducts or electrical cables. Although in effect these infrastructure works do not require a management plan, they will require an EIA to prevent negative impact on the environment and to establish the best way to minimize their effect.

Article 90 stipulates that water replenishment zones that supply water to the population for diverse uses should be subject to a special management regime. This is a very broad and ambiguous limitation that presents application problems. What is a "special management regime?" Too much discretionary decision-making powers are given to public employees.

With reference to the Free Trade Agreements, the Free Trade Agreement between Central America and the United States (CAFTA) establishes that countries must facilitate access to national forest products by external markets. Nevertheless, exporting rolled or squared lumber from latifoliate species is not permitted; this was a safeguard that was included in CAFTA.[52]

The inclusion of protected areas and wildlife in this law project does not resolve the problem of loopholes currently present in these fields. It does not establish management categories, conservation objectives and does not clear up doubts regarding management contracts or co-management for other organizations. In relation to wildlife, it is not clear if it refers to wildlife in protected areas or outside of them. Article 111 only refers to fauna, leaving all other living entities such as flora and other kingdoms without any regulation. AFE is responsible for wildlife, but there are other public institutions with related responsibilities, such as the General Fish and Aquaculture Directorate and authorities such as the Convention on International Trade on Endangered Species (CITES)[53] in SAG, as well as the Biodiversity Directorate in SERNA. The responsibilities of these institutions are the same as related to protected areas previously mentioned in section C.

The concept of a "Forest Regulatory Authority" is established but no disciplinary sanctions are established for infringement.

The Forestry Forum has proposed revising the chapter on crimes and sanctions to differentiate between types of criminal infringement, give COHDEFOR agents the same authority as police, and delineate types of infringement and sanctions. These recommendations are prudent.

[52] "Conservation of natural resources is found in chapter XV (of CAFTA). Administration is found in the chapter on services and investments which establishes safeguards, for example, prohibiting exporting rolled wood.". Jenny Suazo Navarro, Consultant to the Secretary of Industry and Commerce

[53] CITES: Convention on International Trade in Endangered Species of Wild Flora and Fauna.

B. Water Resources

a) Initiative Background

Honduras' water legislation was passed in 1927. Since that time the country has suffered many social and technological transformations as well as a population increase, a greater ecological conscience and a better quality of life, all of which makes the dispositions of the law insufficient and obsolete for an adequate integral management of water resources.[54] Current problems related to water resources are very complex and include the over exploitation of the resource, serious contamination of aquifers and the payment of a leasing fee for using national water.

In 1994, the debate over decentralization and how the municipality manages the resource began on the modernization of this sector promoting the decentralization of services in favor of the municipalities and for them to be regulated by a national office. In 1995 and 1996, reform efforts failed due to opposition by SANAA with regard to decentralization of its services and the resistance of municipalities to submitting themselves to the authority of a national office.[55] As an alternative, SANAA carried out an administrative decentralization program throughout its seven regional offices, which created regional administrative offices under SANAA's supervision.

b) Current Status of the Project

In 2000, the Government sent to the National Congress a preliminary consensus project for the General Law on National Waters, with the support of SANAA and AMHON, the association of Municipalities. This law is one of the recommendations by the International Monetary Fund and the World Bank within the framework of state modernization policies.[56] Among the dispositions of this legal framework is that it facilitates a greater participation by users and allows access to private models for providing services. It proposes a regulatory framework and creates National Potable Water and Treatment Board, as well as a regulatory authority in charge of, among other responsibilities, the fee structure.

On an institutional level, the new law proposes an Office of the Sub-Secretary in the Secretary of Health, to regulate this sector. The responsibilities of SANAA will gradually be transferred to the municipalities, such that the Municipalities will provide services and promote mechanisms for providing services, through concessions, leases, and operating contracts, as the case may be. In addition, the law creates a regulatory authority as a decentralized department of the Secretary of the Interior and SANAA remains as technical support and is in charge of developing rural coverage.[57]

[54] General Directorate for Water Resources: General Water Law
[55] UNCTAD, supra nota
[56] Honduras Revista Internacional, October 2002
[57] General Water Law Project

The bill of law establishes:

- Decentralizing SANAA within a minimum of three years.
- A National Water and Treatment Board
- Transferring dams, wells, systems and pumping stations.

The objective is to promote economic and social benefits for the country. The established measures will stimulate investment, place water resources in order, integrate water management and watersheds as a unit, as well as the hydrologic cycle as a basis for managing the usage rights, with water considered to be a limited resource of great social and economic importance.[58]

However, there is great sensitivity on the part of the municipal sector, political groups and community sectors with regard to discussing this law. Community sectors are opposed because, as conceived, the law will cause services to be privatized, the prices for this vital liquid will increase, and reserve management by the community will be lost. According to this initiative, the administration of potable water services and treatment will be transferred to the municipalities, thus removing SANAA and the Water Administration Boards.[59]

The arguments of groups opposed to the project include:

- Municipalities do not have the capacity nor resources to administer these services.
- Along with the municipalities will come concessions and privatization of services?
- Prices for water services will be more expensive.
- With privatization, many sectors of the population will not have access to water resources. Some believe that providing services for rural areas is not a profitable investment and not a good business for private companies

5. ENVIRONMENTAL IMPACT ASSESSMENT

The General Environmental Law established the procedures for the Environmental Impact Assessment (EIA). The single most important provision of the law is Article 5, which requires that any project which has the possibility to pollute or degrade the environment or natural or cultural areas must be preceded by an EIA. The accompanying regulations, promulgated 5 March 1994, set forth the precise requirements for obtaining an environmental license – a requirement for any project with potential for environmental contamination or degradation.

The environmental impact assessment is a technical instrument that allows the consolidation of development and private and public investment projects within a framework of environmental quality that will assure them a longer life span and more

[58] General Directorate of Water Resources, supra nota
[59] Honduras Revista Internacional, supra nota

sustainable productivity. All projects that present an environmental risk, proposed either from a private company or a public institution, must comply with an EIA. For example, COHDEFOR requires an EIA for its forestry projects, however, in practice this requirement in not fulfilled.

The objectives of these EIA Regulations are:

1- To organize, coordinate and regulate the National System of Environmental Impact Assessment (SINEIA), establishing links between the Environment Ministry and public, private and international organizations.
2- To insure that all plans, policies, programs, projects, industrial facilities and other public and private activities that are capable of polluting or harming the environment be subject to an environmental impact assessment in order to avoid damage to the environment.
3- To identify and develop the procedures and mechanisms through which the SINEIA and other sectoral environmental laws and regulations shall complement one another.
4- To promote, implement and coordinate the incorporation of the public sector, NGOs, banks, private enterprise and central and local government into the SINEIA.
5- To apply all SINEIA policies, standards and procedures in accordance with the nation's economic, political, social, legal, cultural and environmental circumstances, always seeking compatibility between development and the environment.

The process for obtaining an environmental license consists of several steps. The process is known as the Sistema Nacional de Evaluación del Impacto Ambiental (SINEIA). The proponent of any project that has the possibility of causing harm to the environment is required to obtain an environmental license from the Direccion General de Evaluación del Impacto y Control Ambiental (DECA), which is in SERNA. While this overview will not go into the details of the process it can be summarized in five steps:

1. Registration and request for an environmental license
2. Categorizing of the project and specifying the terms of reference
3. Conducting the Environmental Impact Assessment
4. Revision of the EIA
5. Approval of the Environmental License (see chart below)

Projects presented to SINEIA are classified in two types: 1) those that do not require an EIA but application of DECA 002 formulary and a monitoring plan, and 2) those that require an EIA determined according with its negative impact on the environment and according to an established list of projects and type of activity.

It should be noted that the proponent of the project is required to pay all costs associated with the preparation of the EIA and that the process of obtaining an environmental license is open to the public. Private individuals and NGOs are permitted to participate in the process, and make comments. The EIA Regulations under the General Environmental Law establish a requirement for public participation in reviewing proposed EIAs.

However, the regulations do not establish either a procedure for receiving and responding to comments or a time frame for their receipt. Consequently, public participation is haphazard and there are no standards to judge whether the proposing company has complied with this requirement. The DECA is required to note these observations in the terms of reference and to note whether they were accepted or rejected (Article 46 of SINEIA regulations).

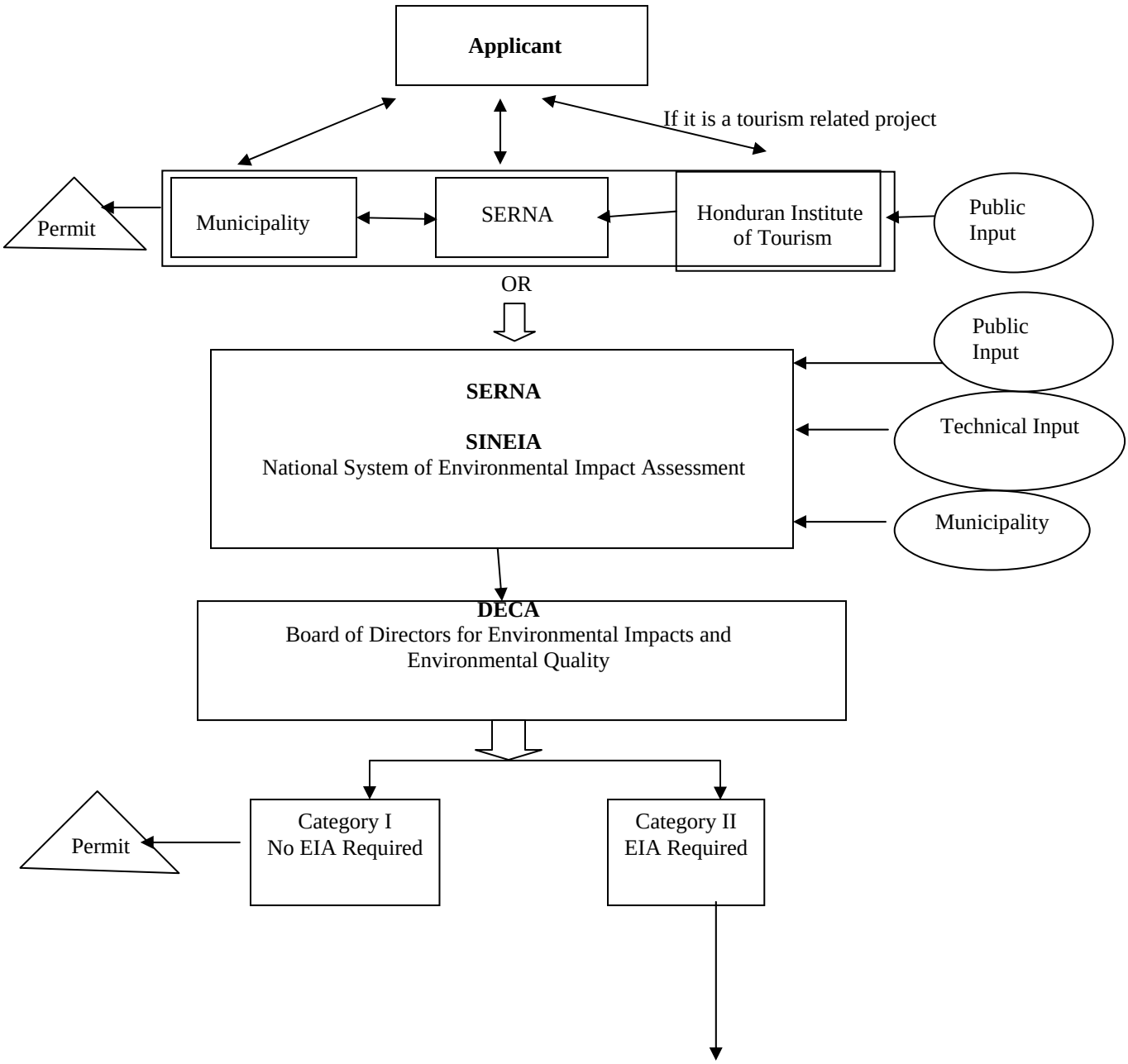
There is an increasing confusion about the purpose of the EIA and most developers believe that the EIA permit allows them to develop their project before receiving the final approval (construction and functioning permit) from the local Municipality. There are current efforts from SERNA to decentralize the EIA process and give Municipalities authority to grant EIA permits for projects under categories I and II.

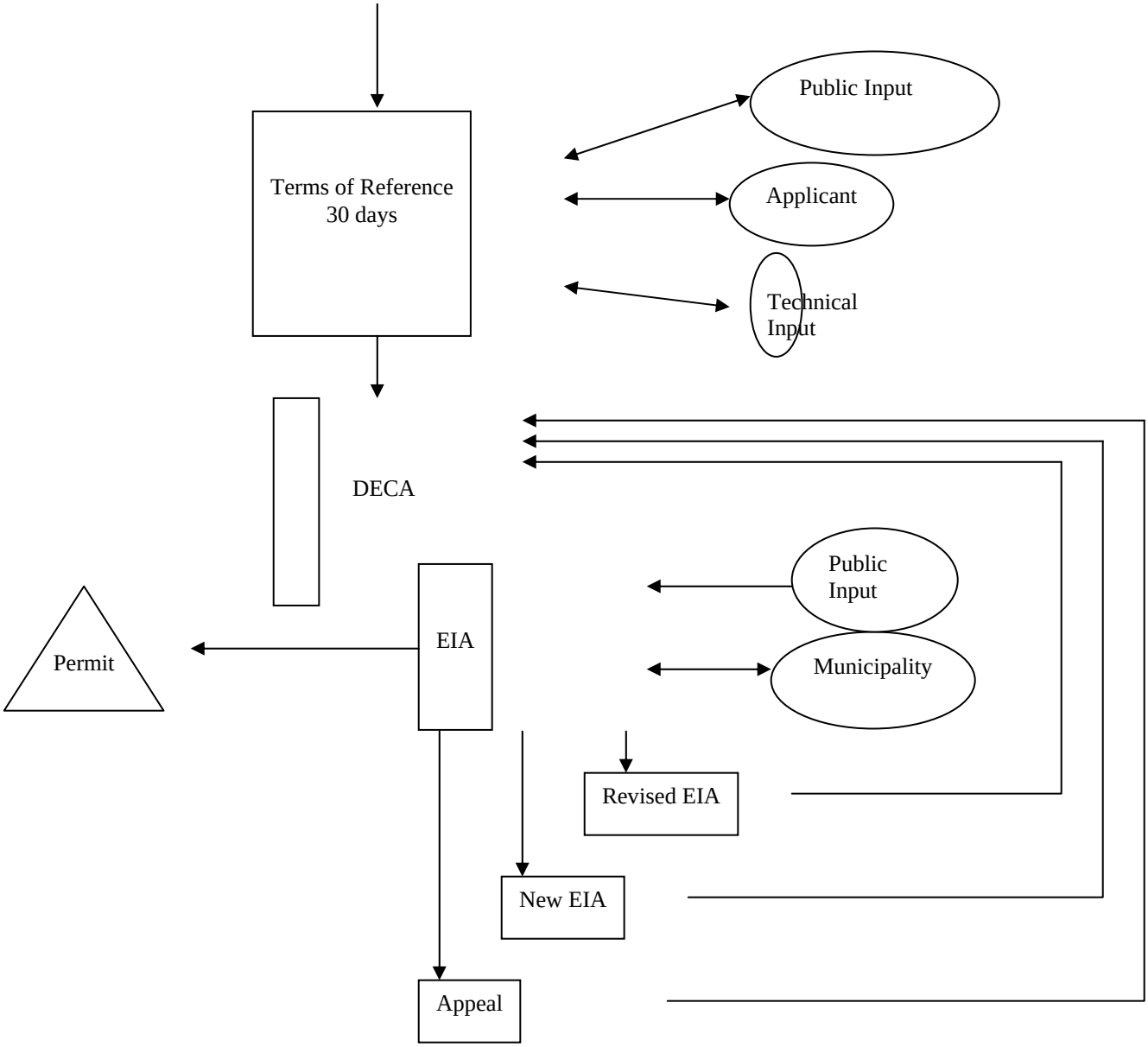
"Regarding the EIA, the Municipality of Tegucigalpa currently provides technical recommendations to SERNA that grants the permits. The Municipality will start granting the EIA permits for projects under categories I and II (low and moderate impact) as soon as the Agreement with SERNA enters into force. This change will speed up the EIA approval process for development projects in the city. Projects under category III will be reviewed by the Municipality but the permit will still be granted by SERNA."[60]

"The EIA decision must be made in 30 days, limiting the time for public consultations with the communities. In addition, neither the General Environmental Law nor the EIA Regulations establish any procedure for public participation. There has been an increase in public participation for mining and hydrocarbon projects due to international support causing opposition and protests against this type of activities."[61]

[60] Jonathan Lainez, Jefe Unidad de Gestión Ambiental, Municipalidad de Tegucigalpa
[61] Emelie Weitnauer, Jefe Unidad de Gestión Ambiental, Instituto Hondureño de Turismo

Chart on the Environmental Impact Assessment Process




Terms of Reference
30 days
Public Input
Applicant
Technical
Input
DECA
Public
Input
Municipality
EIA
Permit
Revised EIA
New EIA
Appeal

6. ENVIRONMENTAL LAW ENFORCEMENT AND COMPLIANCE

"Many countries are taking action to protect public health from environmental pollution and to restore and protect the quality of their natural environment. An effective compliance strategy and enforcement program brings many benefits to society. First, and most important, is the improved environmental quality and public health that results when environmental requirements are complied with. Second, compliance with environmental requirements reinforces the credibility of environmental protection efforts and the legal systems that support them. Third, an effective enforcement program helps ensure fairness for those who willingly comply with environmental requirements. Finally, compliance can bring economic benefits to individual facilities and to society."[62]

According to government officials and the public in general in Honduras, enforcement of the law is perhaps the single greatest problem.

People interviewed in this project and previous studies, consider that environmental legislation in Honduras is appropriate; however the laws are not known by some authorities and the public.[63] Lack of awareness of environmental laws is followed by ignorance on administrative and legal procedures because "citizens do not file complains for environmental harms or violations."[64] Although citizens have legal standing to file complaints, they don't understand that they have the right to do it, or they feel afraid of potential retaliations.

There is distrust in the system because of increased corruption and fear of retaliations when filing complaints against politically or economically powerful sectors. "Conflicts exist because public officials are not consistent with enforcement of environmental laws which is always applied more strictly to poor people and is softer for people with money and power." [65]

"One of the main gaps is the lack of enforcement of environmental laws in Honduras, even though Honduras has one of the best General Environmental Laws in Latin America, the law is not enforce equally, for example big powerful companies or transnational companies with strong political connections receive their EIA and other environmental permits without trouble, operations of many of these companies cause environmental harm, and the government just imposes a ridiculous fine with the excuse that these companies are necessary for the progress of the country. Some examples include: a housing development in Tegucigalpa, Ciudad Mateo, which was built on a watershed that provides water to Tegucigalpa; dredging in the Bay Islands; draining of wetlands to plant African palm in the North Coast of Honduras and shrimp farms in the south. There is a lack of political will to give priority to environmental problems; the

[62] USEPA United States Environmental Protection Agency, Office of Enforcement LE-133, "Principles on Environmental Compliance and Enforcement" July, 1992, EPA/300-F93.
[63] Mauricio Alvarado, Chief of the Municipal Environmental Unit, Copan Ruinas.
[64] Excely Salazar, Chief of Community Development, Copan Ruinas
[65] Dr. Orles Escobar, Member of CODEM, Catacamas, Olancho

government defines its priorities to address only drug issues, murders, robberies but not the environment."[66]

The public institution that carries out most of the enforcement and compliance actions is the Environmental Prosecutor's Office. Its work is acknowledged by the public and private sector and the civil society.

Authorities charged with protecting the environment are concerned that, in some cases, the laws do not give them enough authority or resources to adequately enforce them, and that often enforcement only occurs after damage has been done.

There are important jurisdiction gaps between municipal and national authorities responsible for enforcing the law, mainly due to lack of clarity of their responsibilities and absence of real coordination mechanisms.

Many government officials have cited lack of coordination between ministries and legal authorities as a significant problem. Similarly, a number of damaging and completely prohibited activities are routinely allowed to continue. These include development of projects without an EIA, illegal deforestation, dumping of water and solid waste in water bodies, uncontrolled air emissions from vehicular and fixed sources and solid waste problems. Local sources attribute many of these problems to a broad variety of factors, including: lack of awareness about environmental impacts, a very limited history of complying with environmental laws, lack of resources to enforce existing laws and permits, poorly trained technical staff assigning permit rights, and a range of others.

To improve some of these problems it is necessary to establish an Environmental Enforcement Program to address the following issues:

- To protect environmental quality and public health.
- To build and strengthen the credibility of environmental requirements.
- To ensure fairness and equal access to justice.
- To reduce costs and liability.[67]

SERNA is responsible for enforcing provisions established in the General Environmental Law for actions or omissions against the environment through criminal or administrative sanctions. Penalties include incarceration, fines, closure, suspension, seizure, cancellation, compensation, and when possible, replacement or restoration of the affected areas to their previous state.

The Regulation to the General Environmental Law also states the Secretariat's duty to conduct inspections and monitoring, and also to impose preventive and corrective measures at the national level. At the local level, municipal governments have authority to implement inspection and monitoring actions within the "scope of their power and jurisdiction."

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[66] Ricardo Steiner, President, Board of Directors, Fundación Pico Bonito, FUBNAPIB

[67] USEPA United States Environmental Protection Agency, Office of Enforcement LE-133, "Principles on Environmental Compliance and Enforcement" July, 1992, EPA/300-F93.p. 1-4

The Criminal Code imposes imprisonment as a penalty for crimes against public health. At the Judicial level, there are thirteen Environmental Prosecutors; eight are located in Tegucigalpa and five in different departments. In addition there are Technical Environmental Units in three of the country's regions.

There is disbelieve in the legal system because existing cases "never go to trial, last for a long time, the decisions are never implemented or violators do not go to jail or pay ridiculous fines. The only ones that are sanctioned are farmers or poor people when they cut one tree, but wealthy companies that cut hundreds of trees never go to jail because there is corruption and political influence in the legal system."[68]

Fines for environmental violations are generally small, and have decreased in severity with a decrease in the value of the Lempira. Similarly, criminal penalties are often weak, despite the range of options that the law provides.

Another problem in the area of enforcement is lack of resources, staff, vehicles, and expertise. Many police and military units are severely under funded, and as they seek to maximize their effectiveness with limited resources, environmental harms are often considered a lesser priority than violent crime theft, and other more obvious violations of the law.

Regarding forestry and water resources, problems are related to conflict and lack of clarity of laws which are obsolete, as well as the lack of resources and political will to enforce existing regulations.

"The legislation does not address appropriately the following issues:

- Involvement of local groups (community organizations) in management activities and there is no reference on how to distribute benefits from natural resources to the communities;
- Does not provide mechanisms for social participation in auditing the use of natural resources;
- Is punitive and not preventive. Does not establish mechanisms for restoration of damages
- Does not address the objectives of the communities just the objectives for the protection of the resource
- Forestry Management Plans are instruments to destroy the forest because are not developed appropriately."[69]

In order to conduct a complete analysis of legal issues affecting the environment and natural resources sector several other issues must be discussed. These include:

- Property law in general is weak and unclear, including squatters´ rights, trespass and nuisance, condemnation and regulatory takings.

[68] Ricardo Steiner B., President, Board of Directors, Fundación Pico Bonito FUPNAPIB.
[69] Francisco Urbina, Jerson Pineda,, supra note

- Civil and Administrative procedures in practice do not provide a real response to environmental problems, including delays, costs, quality and availability of legal representation and transparency of the system.
- Customs law and taxes for goods do not encourage adoption of cleaner technologies, including equipment for development and environmental equipment.
- Alternative means of dispute resolution such as arbitration, mediation, and conciliation are not commonly used.
- Most Municipalities lack capacity and resources to implement their environmental responsibilities

II. The Land Tenure System[70]

87% of Honduras' territory is considered suitable for forestry use representing 9,786,804 has; of this potential use, about 50.5% (5,680,520 has) is still under forestry cover, including 2,899,000 has. of latifoliate forest, 2,781,250 of pine forest and 51,800 of mangroves (National Forestry Plan, PLANFOR, 1996)."[71]

The country's total area is 11 million hectares, 4 million are legalized, and there are more or less 7 million hectares in protected, forest and untitled areas.

The territory is the basis for developing all production activities and for conserving the country.

1. LAWS RELATED TO LAND TENURE IN HONDURAS

Name of the Law	**Number of Decree and date of publication**
Agrarian reform Law	Decree-Law No. 170 of December 30 1974.
Forestry Law	Decree No. 85 of 18 November 1971.
Law of the Honduran Corporation for Forestry Development (COHDEFOR).	Decree Law No. 103 of January 10,1974.
General Forestry Regulations	Agreement No. 643 of April 9, 1984.
Law for the Protection of the Coffee Industry	Decree No. 78 of September 23, 1981 Decree No. 89 of September 30, 1981

The territory's lack of legalization is due to a lack of a Land Office with trustworthy data, with up to date information, and there is no liaison between the land office and the property registry. There is no clear information about what is agricultural or forest land

[70] Information supplied by Roy Murillo of the INA; Donaldo Ochoa Moreno, COCOCH.
[71] Directrices para el Desarrollo Ambiental Sustentable de Honduras, Area Temática: Manejo sustentable de bosques, no. 4, Tegucigalpa, junio 2002, p. 1

and protected areas, and consequently there is a lack of judicial, physical, economic and fiscal security.

This is a fundamental element for a judicial organization that would permit the conservation and use of natural resources. Ambiguities in property rights make it difficult to apply and comply with legislation. Clarity and security with regard to property rights are necessary conditions for applying effective environmental legislation.[72]

The Law for Agrarian Reform makes a distinction between public land and private property (Articles 6, 12 y 23). The former includes "original property" or waste lands or "*realengas*," marginal lands, and land grants from the Spanish Crown that belong to the state because they are within territorial limits and do not have an owner (Article 618 Civil Code). Also included are communal lands administered by the municipalities and land acquired directly by the state or through decentralized institutions in the public administration. Privately owned lands are those whose ownership pertains to individuals.[73]

Both public lands and private property not being used in harmony with the social function of property as defined by the Constitution of the Republic are affected by the objectives of agrarian reform and subject to redistribution to farmers and community groups.

The Law for Agrarian Reform included four causes to be affected and begin the recovery process:

- Excess usage "sobretecho" (Article 25),
- Indirect usage (leasing),
- Deficient usage (used at a minimum of 95%),
- Uncultivated or fallow land.

The Agricultural Sector Modernization and Development Law reformed certain aspects of the Agrarian Reform Law. It affected farmers in their objectives to have access to land, particularly since the causes to be affected were modified. The cause for indirect or deficient usage was eliminated and fallow land had a term of 2 years. Therefore, today it is very difficult to have access to land.

To avoid excess usage "sobretecho" what has been done is that the land is divided up among family members. When access to fallow land is wanted, the owner is notified and given a term of 18 to 24 months to work the land, if the do not have personal financial resources, co-investment is possible.

Access to land is a long process that generates many conflicts, some cases lasted 20 years, others did not have any challenge and lasted 2 years. Farmers report the land to INA, and the process begins. For national legal or communal lands, the process is shorter

[72] Contreras-Hermosilla, 2001, "Forest Law Compliance: an overview".
[73] Rendón Cano, Julio, "Analysis of land and forest tenancy systems; conservation and sustainable use".

by means of recovery. For private legal land, the longest procedures are followed by means of expropriation.

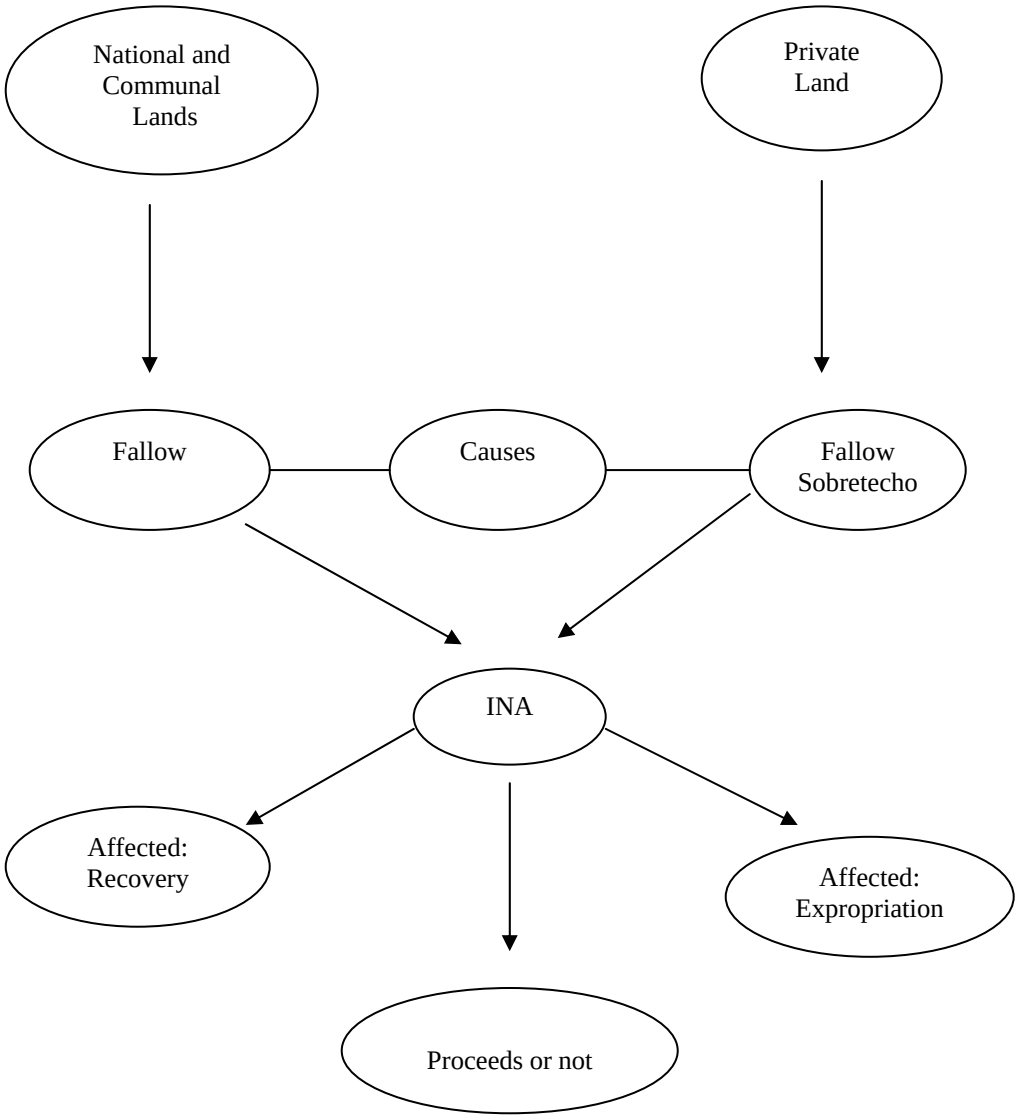
The procedure under the agrarian reform takes into consideration the type of land and specifies who is qualified to apply for the property ownership. Regarding the land, it must be rural land, rustic lots, dedicated to agriculture. The qualified applicant must be a farmers' organization, although at the time of application it can be an organized group with no legal standing as yet.

The process is to a great degree dependent on the inspection performed by an agronomical engineer and the process continues based on this report. Judicial decisions are based on that report. This is precisely where loopholes in the law arise. It could have been certified for agricultural use, but there is a forest; the same may occur when an area for replenishing aquifers is involved.

When expropriation is involved, the land must be paid for and during recovery, improvements must be paid for. The land is paid by the Government to the owner and includes the price of the land and improvements. When a government institution is involved, a transfer is requested for the purpose of agrarian reform.

The agrarian reform law permits the issuance of title when the forested area was 40% or less, the 40%-60% formula was used – 40% forest and 60% agricultural. In 1992 this percentage was eliminated, such that if, on a property to be granted, there is 10% forest, it will be excluded from the title. That percentage will be made available to COHDEFOR for its usage with authorization of a management plan.

With regard to measures for protecting water, it mentions that watersheds, upper reaches of rivers, and dams will not receive land titles. If they are national or communal, they will be issued a title in favor of the municipality. For rivers, 150 meters from the banks are reserved; for watersheds a diameter of 50-60 hectares is specified.


National and Communal Lands
Private Land
Fallow
Causes
Fallow Sobretecho
INA
Affected: Recovery
Affected: Expropriation
Proceeds or not

The Property Registry is regulated by the Supreme Court and it is present in each department. The principal conflicts or loopholes identified are:

- The management of human settlements in buffer zones for protected areas: the legislation talks of adequate use of the soil, but there is no clear definition of what "adequate use" of a protected area is.
- The presence of people within protected areas continues to be a topic of conflict.

Two examples:

1) In the Punta Sal Park, a densely populated area in the department of Atlántida y Cortés, those in possession of the land allege rights acquired prior to the creation of the protected areas. Authorities within the park are quite diluted between the NGO that administers it, the Garifuna communities, the municipality, etc. Recently, and in order to end the legal uncertainty, COHDEFOR and SERNA authorized granting property titles in buffer zones to those who probed their possession rights before the creation of the national park.

2) In the PATUCA National Park there are farmer settlements in the very center of the Mesoamerican Biological Corridor; currently farmers are migrating toward protected areas.

"There is institutional conflict between INA and COHDEFOR, since the latter retains the right to decide which lands are and are not forest lands. If they are forests, they cannot be transferred to private owners. COHDEFOR has lodged a protest because INA has granted land titles on land they consider to be forest. (...) As long as there is no determining technical decision as to which are public forest lands (land titles cannot be granted to individuals), it is not possible to stop the process of speculative land grabbing on the agricultural frontier, which is considered one of the main causes for the loss in latifoliate forest coverage."[74]

This prohibition against granting title to forest lands has been reformed by other laws that seek to benefit certain sectors. For example, the Coffee Industry Protection Law granted the regularization of land tenancy above 2,000 meters in buffer zones and on certain lands with a 35% slope.

[74] Segura, O. Kaimowitz, D. Rodríguez, 1997, "Forestry Policie Ameria: Analysis of the restrictions for the development of the forestry sector," IICA-Holanda/LADERAS C.A., CCAB-AP, Frontera Agrícolas, 348 p., p. 253.

2. DESCRIPTION OF PROCEDURES FOR LAND TITTLES

The National Agrarian Institute establishes 4 procedures for land titles including:

1.- Individual Title: legalization

2.- Title for the Reformed Sector: recuperation and transfer (national lands and ejidales under private ownership)

3.- Limitation of Land through recovery

4.- Expropriation of land (see charts below)

INA has nine offices in the country: one located in Tegucigalpa and the other eight located in regional offices.

3. IDENTIFIED CONFLICTS IN THE LAND TITLE PROCESS FROM THE INA PERSPECTIVE

One of the most conflicting issues is the definition of administration boundaries and determination of the legal nature of the land: national or ejidal. At present, in the Department of Olancho there are 800 titles pending registration at the Property Registry, because of institutional conflicts between INA and the Municipalities regarding ejidales. The Agrarian Reform Law establishes that to comply with the Agrarian Reform, all rural ejidales will move under INA's authority (Chapter I, article 12). In addition, there are legal conflicts and authority tensions (Mayors, Property Registrars).

Another important issue is that many farmers do not have economic means to pay them land and title (although they have up to 20 years to pay). Currently there are approximately 20,000 Titles of Ownership that have not been picked up by their owners from INA's offices.

The title process for the Reformed Sector is slow because the National Agrarian Council is very political and the installation of Agrarian Tribunals is still pending.

The title process in the Bay Islands in not under INA's jurisdiction because is responsibility of the Procuraduría General de la República as established in the Tourism Law.

Lack of harmonization between INA and COHDEFOR creates conflicts in the title process for forestry lands under agriculture use. There is also a different criterion in defining "rural land" and "forestry land." INA is required to request COHDEFOR's opinion on these situations, however, COHDEFOR usually does not make a decision and these files are kept on hold for long periods of time.

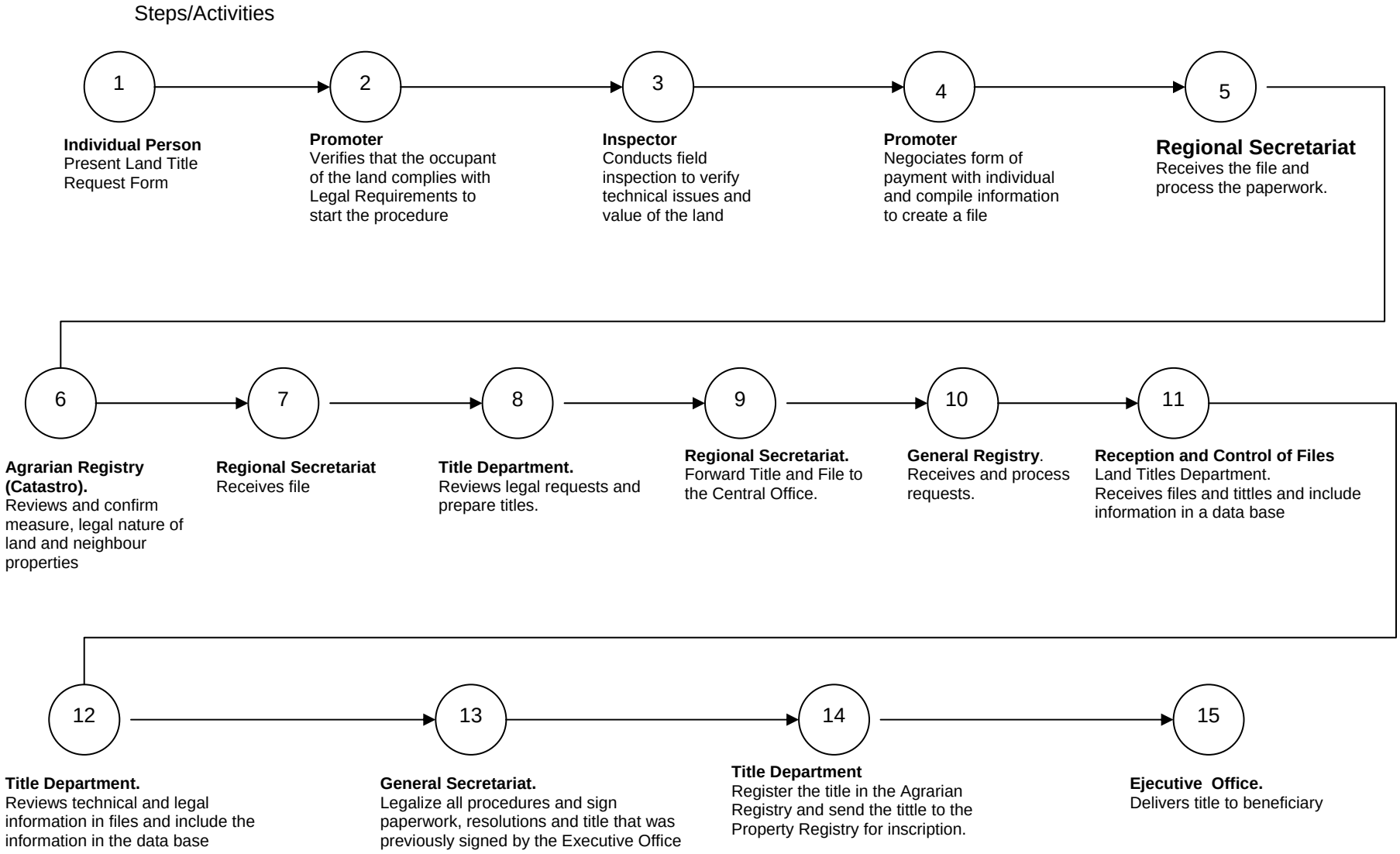
The legal framework for the title process includes the Legislative Decree 127-2000 that contains "Reforms to the Municipal Law" that gives authority to INA to grant ownership titles to Municipalities on forest lands in ejidales. This Decree is not known and INA has not processed many requests for these types of titles, the timing to make a decision is 180 days after the request is filed. In case of massive application of this reform, the role of COHDEFOR in granting titles in ejidales will disappear.

In protected areas, INA has authority to grant titles in the buffer zones only when it is established in the Decree that creates a protected area, which requires approval from COHDEFOR y el SERNA.

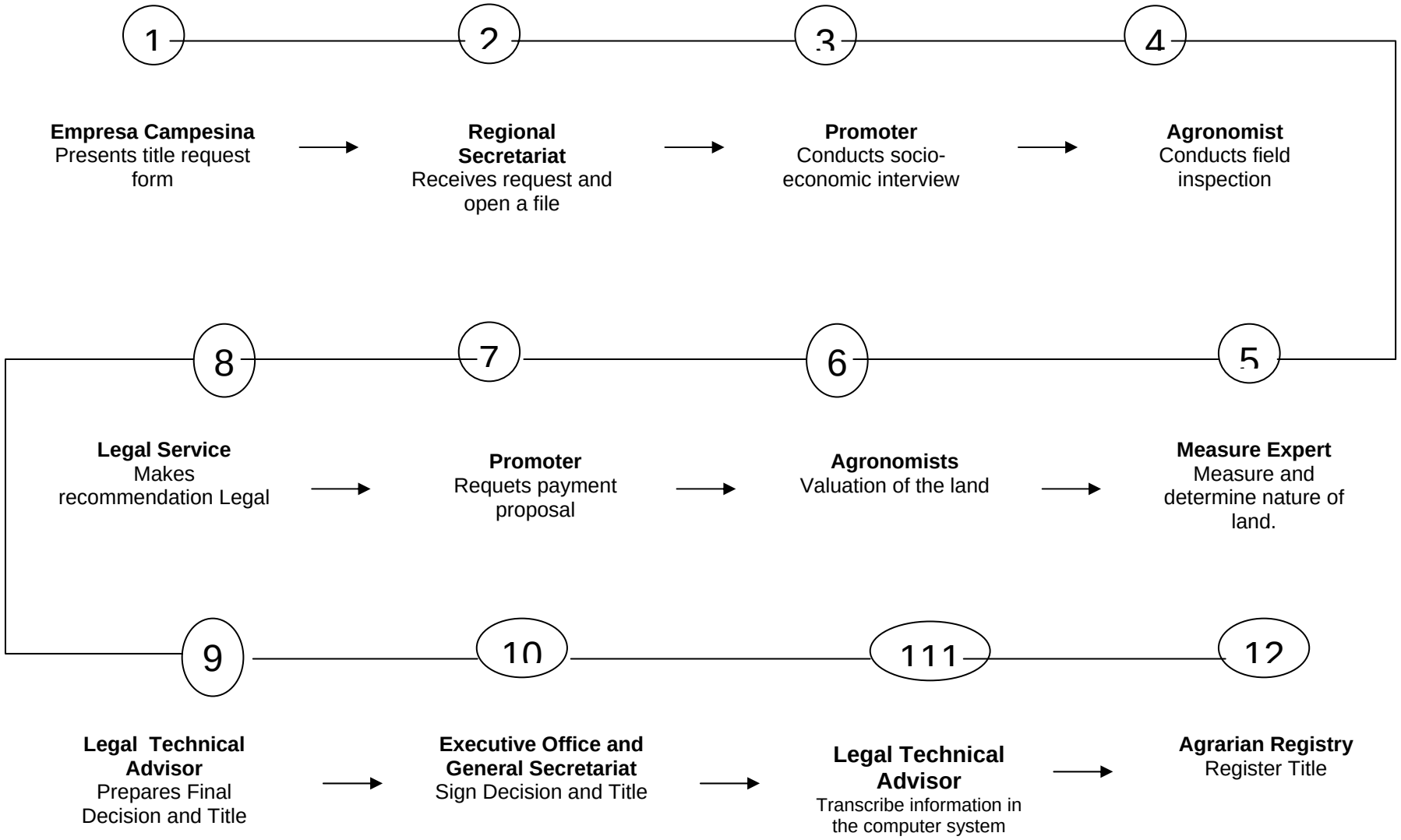
In the zones of the Rio Plátano Biósfere, Olancho and Gracias a Dios Departments, the rights of indigenous peoples to their historical lands is protected by the Constitution and International Treaties. However the creation of the Biosphere, affects the land rights of 3 Tawaka communities and other Miskita communities. In 1995, INA granted Ownership Titles of these lands to COHDEFOR to ensure their protection; the area includes part of the Tawaka reserve. There is an indigenous movement that requests that their land is declared "Tawaka's Indigenous Reserve" to protect it against "ladinos" that are taking their territories.[75]

[75] Rivas D., Ramón, "Pueblos Indígenas y Garífuna de Honduras (Una caracterización)", Editorial Guaymuras, Colección Códices, Tegucigalpa, 1 edición, noviembre 1993, p. 388.

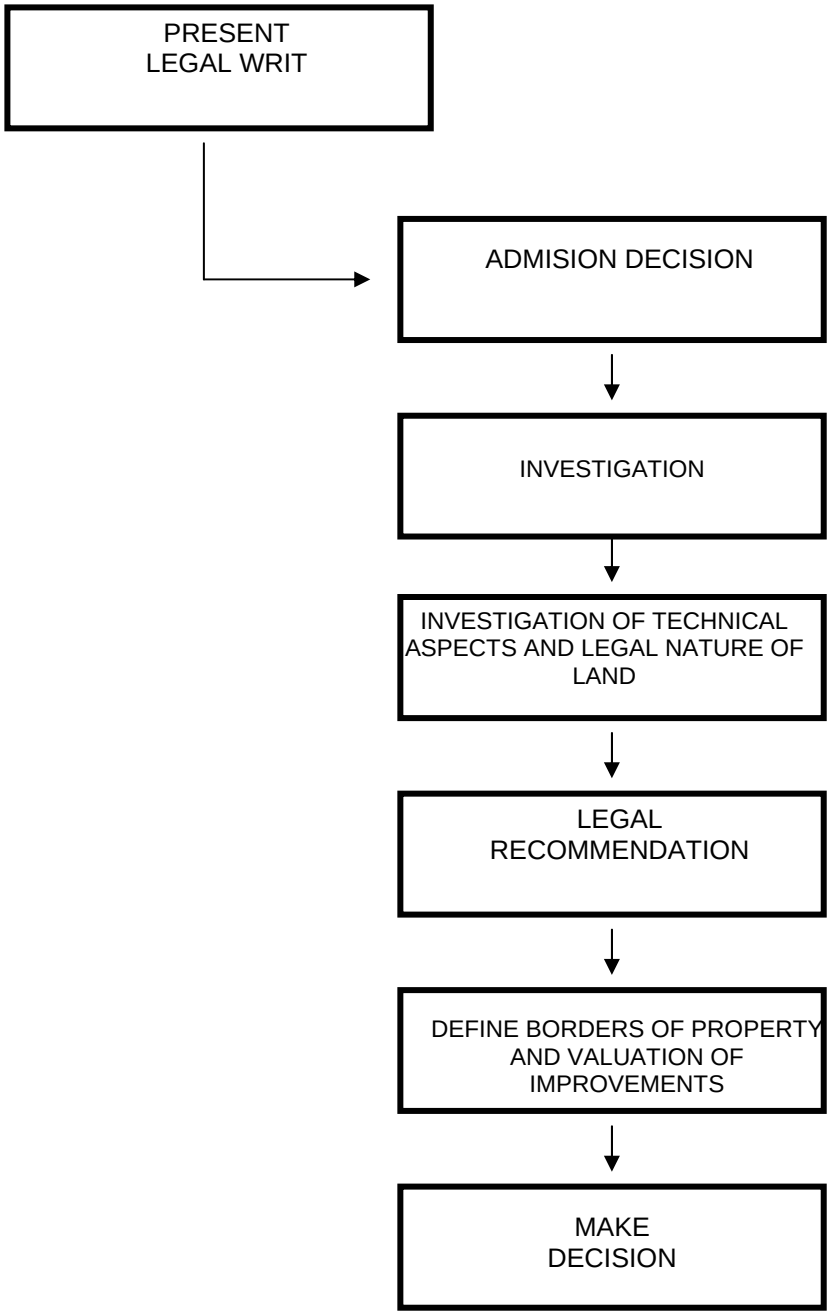
PROCEDURE FOR INDIVIDUAL TITLE



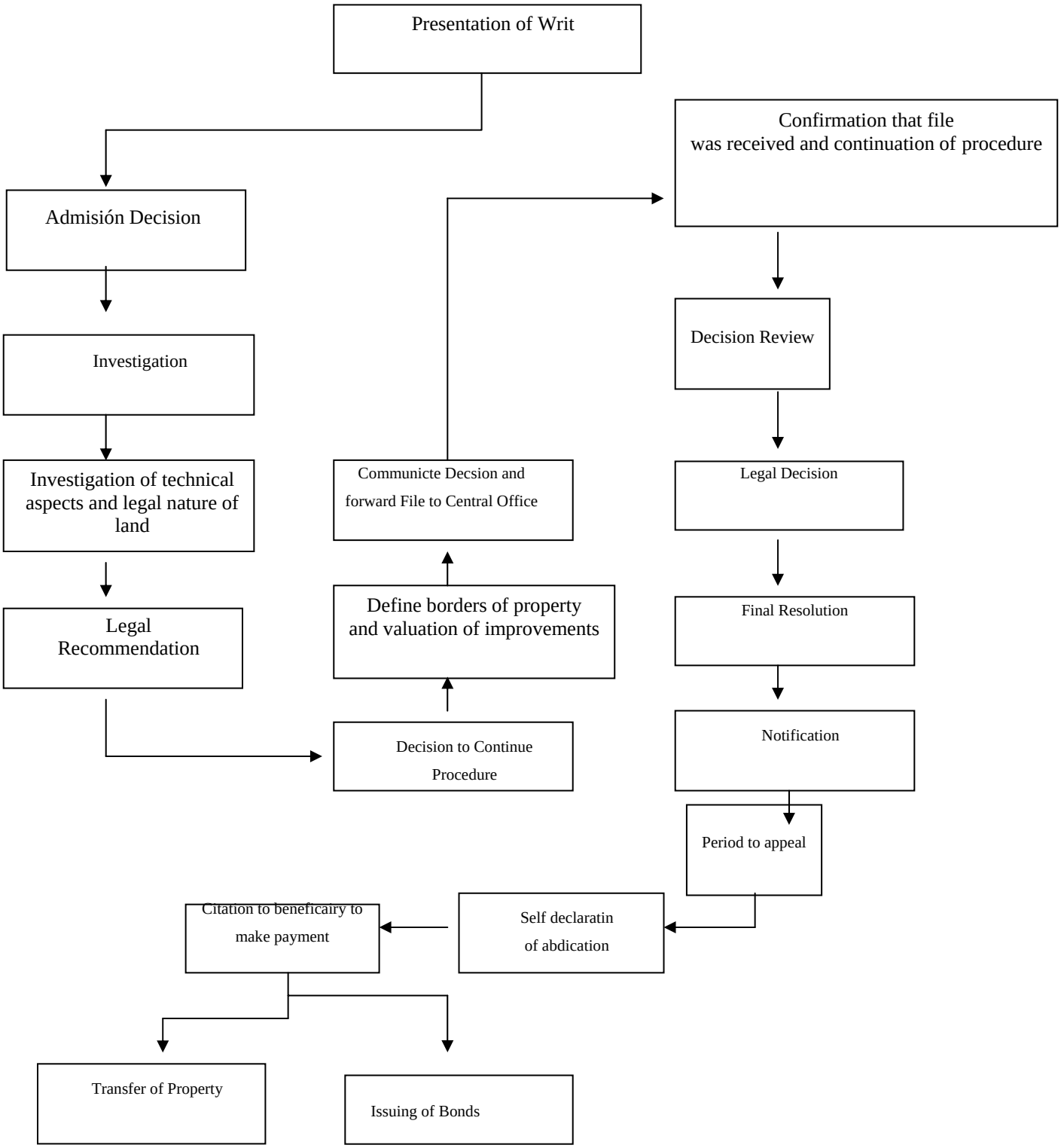
Procedure for Title for Reformed Sector



Procedure to impose a Land Limitation through Recovery



PROCEDURE FOR EXPROPRIATION OF LAND



III. Analysis of the Impact of CAFTA on Environmental Legislation

1. BACKGROUND

Negotiation for a free trade agreement between Central America and the United States caught the attention of the country and the region during all of 2003 and will continue to do so until the ratification is finished or not.

Negotiations were confidential; however, some production, social and environmental sectors followed the negotiation rounds very closely anticipating the impact that such an agreement could produce and brought their proposals to the negotiation table. Nevertheless, the confidentiality clause, established by the United States Government as a negotiation requirement, was precisely the principal demand of the organizations that insisted on knowing the content of these negotiations.

On December 17, 2003, Guatemala, Honduras, El Salvador and Nicaragua closed the negotiations. Costa Rica asked for more time to continue discussing topics that had not been settled to its satisfaction. Finally, on January 25, 2004, Costa Rica completed the negotiations.

2. INTRODUCTION

The environment is a critical topic in the discussion of a free trade agreement because:

- In a country like Honduras where its capital is concentrated in its natural wealth, transnational private investment will have an impact on the use of its natural resources and ecosystems.

- National security must be looked at from three viewpoints: technological security, environmental security, and food security.

- Sustainable development implies economic, social and environmental considerations and in the case of underdeveloped countries, they must focus on reducing poverty.

The CAFTA provides an opportunity to open commercial frontiers to one of the largest business partners, but it also represents a great challenge because within its commitments there is the additional obligation of complying with environmental legislation, a commitment that in case of infringement could result in trade and even economic sanctions. Fines in the case of infringement of labor and environmental laws could be US $15 million. Technical consultations in this field will be resolved through a mechanism for conflict resolution that foresees the setting up of a panel to establish fines in accordance with the size and level of development of the economies.

3. CONSIDERATIONS ON THE SUBJECT OF THE ENVIRONMENT

The environment was incorporated within the text of the free trade agreement under Chapter 17 of CAFTA. However, the environment is a topic that prevails throughout the length and breadth of the agreement. Thus we must consider content related to services, intellectual property and investments for an adequate understanding of the environmental ramifications.

A. Related Topics

a) CAFTA, Chapter XVII

According to the environmental negotiator for the Government of Honduras, Jenny Suazo Navarro, at the start of negotiations "our concerns were, what are the general principles of our legislation? A developed nation cannot require equal legislation from underdeveloped countries and there must be a will to cooperate, so we wanted:

- That our asymmetries be respected
  - That it be based on cooperation
  -

The text initially presented by the US Government was geared toward respect for environmental legislation. We started to analyze what was necessary for environmental reform. We understood that our legislation was in accordance with these principles and we did not require legal changes. It does not require institutional changes, but it provides a great challenge, and a great commitment as in the application of and compliance with environmental legislation. We were able to include in the agreement, a parallel agreement for environmental cooperation."

CAFTA is based on the sovereignty of each party with regard to the establishment of its own levels of environmental protection, policies and priorities in environmental development. Trade and investment that weakens or reduces environmental protection cannot be promoted.

The point of entry for discussion of Chapter XVII, which refers to the environment, is worth analyzing, first of all with regard to what environmental legislation is.

"17.13 Definitions:

Environmental legislation refers to any law or regulation of one party, or dispositions thereby, whose main purpose is the protection of the environment, or the prevention of some danger to life or human, animal or plant health, through:

a. Preventing, reducing or controlling any leak, discharge or emission that contaminates the environment.

b. Controlling chemical substances or products, or other substances, materials or toxic or dangerous waste that threatens the environment and the publication of related information or
c. Protecting wildlife conservation – flora and fauna – including endangered species, their habitat and natural areas under special protection.

To ensure clarity, environmental legislation does not include any legal disposition or regulation or any disposition whose principal purpose is the administration of commercial harvesting or exploitation of natural resources, or harvesting natural resources for subsistence or for indigenous harvests."

It appears that, with regard to the environment, it was considered more important to include only the topic of conservation in Chapter 17, and topics relating to natural resources were placed under services and investments.

"It was agreed that administering natural resources would be separated from conservation. Conserving natural resources is contained in Chapter XVII. It cannot include measures to reduce environmental standards to promote trade. Administering natural resources is contained in the chapter on services and investments, where safeguards to prohibit exporting rolled lumber have been included"[76].

In Appendix 17.1, Article 3, paragraph h) the parties identified the following priorities for developing cooperative activities: "…h) developing and promoting beneficial environmental goods and services…" There is no definition in the agreement of the term "environmental goods and services." "But if this matter is placed within the context of negotiations in the General Agreement for Trade in Services (GATS), we can make sense of this priority stated in that manner. In reality "promotion and development" of such services refers mostly to the mid-term privatization of water supplies and other "environmental services."

Citizen participation is another objective that the agreement seeks to promote and it stipulates in Article 17.3.3 that:

"Each party will guarantee that persons with legally recognized interest[77] with regard to internal rights, will have adequate access to the procedure for compliance with environmental legislation."

The chapter on the environment is subject to the Environmental Cooperation Agreement (ACA in Spanish), which in fact includes cooperation with regard to the environment, rather than having a repressive focus.

It is important to have a clear definition of the relationship between the Environmental Affairs Council and the present Central American Commission for Environment and

[76] Jenny Suazo Navarro, Environmental Negotiator, Secretary of Industry and Commerce.
[77] A legally recognized interest is a legitimate right recognized by the law.

Development (CCAD in Spanish) within the System for Central American Integration (SICA in Spanish). This in an issue that the Central America governments must define. The Environmental Cooperation Agreement (ACA in Spanish) has defined the following priorities.[78]

17.1 Priorities for developing activities related to environmental cooperation:

a) Strengthen environmental actions
b) Develop and promote environmental incentives and mechanisms
c) Training
d) Conservation and management of shared migrating species in danger of extinction and that are subject to international commerce, the management of marine parks and other protected areas
e) Multilateral environmental agreements
f) Better practices to achieve sustainable environmental actions.
g) Cleaner production
h) Environmental goods and services
i) Promotion of public participation
j) Exchange of information and expertise.

b) Intellectual Property Rights

Chapter XV: includes regulations on intellectual property rights, requiring the country to ratify

- The Budapest Treaty on international recognition of the deposit of microorganisms at the end of the patent procedure. (1980)

- The International Convention for the protection of plant matter (UPOV 1991) prior to January 1, 2007.

In accordance with Chapter 15, its content will be the minimum obligation of the parties. This means that each country "can" include in its own national legislation broader protection and observance of the rights to intellectual property but not less, a condition for "non-infringement of the dispositions of this Chapter."

On this topic, Honduras considered that these requirements were in accordance with the development followed by the country, according to the OMC.

c) Genetically Modified Organisms (GMO´s)

CAFTA does not include specific regulations on genetically modified organisms, however, increased imports of products such as soy, corn and cotton, as well as processed foods, will increase the possibility of bringing into the country genetically modified seeds and foods.

[78] These priorities will be defined by the Working Plan of the Environmentla Cooperation Commission between the United States and Central America and will include representatives from each government appointed by each party.

B. Final comments

Expectations are that with the approval of CAFTA more investment in Honduras can be promoted, which will make use of the available natural resources without comprising the environmental resources for future generations. The existing environmental legislation has sufficient regulations to ensure that the use will be sustainable. However, the mechanisms for controlling application of these standards and the institutional capacity to do so must be reinforced and strengthened.

There is some concern about different sectors regarding the ability of medium to small businesses to compete with large companies. There is no information at the level of each citizen with regard to CAFTA, nor its possible impact on the country, participation of civil society has been limited due to the lack of information on trade, environment and development implications of the agreement. The greatest obstacle to the development of investments seems to be the judicial insecurity relative to property ownership.

Once the Investment Law entered into effect in 1992, Honduras began a process of opening up to foreign investment to equalize dealings with national investors. This law reduces controls and governmental intervention. This law is oriented the same as Chapter X of CAFTA which adopts the principle of "National Treatment," through which the country must grant foreign investors a treatment which is no less favorable than that granted under similar conditions to its own investors with reference to the establishment, acquisition, expansion, administration, conduction, operation and sale or other form of investment in its territory (Article 10.3). While CAFTA promotes issues relative to the investment climate, the Honduran General Environmental Law promotes conservation, sustainable and moderate use of the natural resources and environmental protection. The economic development must incorporate the environmental limitations to be sustainable. The 1993 General Environmental Law establishes stipulations to make industrial, agricultural, cattle ranching and forestry activities compatible with conservation, sustainable and moderate use of the natural resources and environmental protection. In addition, the following laws on investment have been approved:

- Intellectual Property Law
- Tourism Incentives Law
- Law for the Promotion and Development of Public Works and National Infrastructure
- Law for Administrative Simplification

The private sector has come together with the government institutions to establish conditions that will permit compliance with environmental legislation, in gradual processes involving production sectors. "Independent of CAFTA, the new globalization trends and situations regarding the quality of life of its citizens make it imperative that these laws are complied with. Agreements have been reached, for example, with the poultry industry with regard to environmental measures and all farms are following this

model. With regard to textiles, there are also agreements for the entire sector reached with SERNA. Other agreements include sugar cane and petroleum distributors, etc."[79]

The majority of interviewees seem to feel that the main impact of CAFTA will be on forestry and water resources. "CAFTA will increase the demand for wood products and by-products for export. The irrational exploitation of forest will continue because in Honduras timber for export requires a management plan approved by the Government, however in practice such plans are not implemented and are used as logging permits in pine and latifoliate forests. The CAFTA will provide opportunities for an increase in production but will demand higher quantities of energy, more extraction of forestry products and more coastal resources for tourism."[80]

For those from the social, environmental or peasant movements CAFTA will create new risks of concentration of capital. Environmental, social and peasant groups are concerned about the impacts of CAFTA. They believe that "lower classes will not receive any benefits from CAFTA. Benefits will be only for the economically powerful groups. CAFTA will contribute to the concentration of capital among very few people. In general, disadvantages will include:

- Loss of sovereignty over food security;
- Increase of poverty;
- Privatization of basic services such as water;
- Installation of transnational companies dedicated to mining, forestry and generation of energy; and
- Increase in pollution and destruction of natural resources because the country does not have the capacity to regulate new activities."[81]

[79] Benjamín Bográn, Executive Director, COHEP, in reference to the agreements achieved by the productive sector as well as the industries that belong to this organization.
[80] Gerardo Rodríguez, Director FUPNAPIB
[81] Juan Ramón Zúñiga, Member of CEPAVEG (Central de Patronatos de la Venta, Gualaco) that belongs to the Olancho Environmental Movemen (MAO), Guanaco.

IV. Conclusions and Recommendations

The 90's marked a structural change in legal ordinances in Honduras. The General Environmental Law was approved in 1993. This action created a Secretariat of State in charge of environmental issues and natural resources and established the EIA as an instrument for environmental control.

In parallel, the Investment Law was promulgated in 1992 in order to stimulate foreign investment. Subsequently, the laws related to intellectual property, tourism incentives, administrative simplifications, and public work concessions were reformed.

Tension exists between these legal variants. The environmental side would like to establish controls and regulations to ensure sustainable use of natural resources. The investment side would like to establish conditions that are propitious for developing economic activities, where most require intensive use of natural resources that could cause an environmental impact in the short term.

The same tension that exists between development and conservation is reflected in this situation. This could find a fair balance, what is known as sustainable development. Sustainable development, although it takes the need for development into consideration, recognizes the existence of environmental limits.

1. THE STUDY'S PRIMARY FINDINGS

1. US AID has a regional strategy for Central America and Mexico for the FY 2003-2008 period. This strategy provides a framework for the Honduran national plan, which has raised three strategic objectives: more responsible and transparent government; a more open, diversified, and expanding economy; and people who are more healthy and better educated. Among these strategic objectives, synchronizing environmental legislation and improving how it is complied with and fulfilled has been considered to be relevant.

2. The Honduran Political Constitution approved in 1982 establishes, in Article 145, that the state is obligated to conserve the environment such that it is suitable for people's health. This article omits recognizing the importance of an ecological balance by solely referring to people's health.

3. The Honduran Political Constitution establishes norms that are intended to protect the rights of Honduran citizens, by providing them exclusively with the management of the print and televised media, establishing percentages of Honduran workers in companies, and prohibiting foreigners from owning property on the coast.

4. The General Environmental Law is the main law regulating the permissible impact on the environment by commercial operations and is the most important law in relation to protected areas. This is because it establishes the framework for designing, administering, and controlling protected areas, including national parks. This law provides a solid framework, although it is not always consistent and clear, for promoting environmental protection. The law directly stipulates what is forbidden and which procedures should be followed. In practice, this law lacks specific implementation mechanisms, so the level of compliance is weak.

5. Forestry legislation has existed in Honduras since the beginning of the 20th Century. Currently, decentralizing competencies about forestry management to the municipalities has been promoted. The law on forestry incentives approved in 1993 that intended to promote incorporating the private sector in forest activities such as plantations or conservation has not been developed since the financial resources that would sustain the pertinent funds have not been provided. There is concern by the social and environmental sectors about the excess usage of forest resources, primarily with regard to latifoliate forests.

6. Institutional conflicts exist between COHDEFOR and the National Agrarian Institute with regard to providing property titles in forest areas and between COHDEFOR and the municipalities due to the scope of the competencies for each of them over forests, primarily community forests.

7. The declaration of protected areas has been recognized since the beginning of the century; however, it was at the beginning of the 80's that a more stable process was initiated. This process was strengthened in 1993 by the creation of the Honduran National Protected Area System (SINAPH in Spanish). It settled in more firmly in 1999 when this regulation was promulgated. There is no integral regulatory framework for protected areas.

8. Institutional responsibility is shared by three state secretariats: The Secretary of Natural Resources and the Environment (SERNA in Spanish), which created a biodiversity directorate; the Secretary of Agriculture holding the Fishing and Aquaculture Directorate (DIGEPESCA in Spanish); and the Honduran Tourism Institute (IHT in Spanish). Likewise, responsibility for protected areas are held by:
    - A semi-autonomous entity, COHDEFOR, holding the mandate for managing protected areas and wildlife.
    - The municipalities hold the mandate, as has been mentioned, for conserving and safeguarding protecting, patrolling, and controlling the biological resources in their jurisdiction.
9. Very little clarity exists about the restrictions on private property imposed by the "buffer zone" for a protected area; legally a management plan should be established but in most cases none exist.

10. In 1993 it was allowed that protected areas be administered by people with private rights. These agreements should clarify the functions and scope of the competencies for each of the stakeholders.

11. The level at which the National Biodiversity Strategy is applied is insufficient and the DIBIO-SERNA shows institutional weaknesses in its development. There are biodiversity fields that are not regulated such as: access to genetic resources or intellectual property for living organisms.

12. The regulations on wildlife have been based on presidential agreements. No integral regulation for this resource exists, nor is there one for conservation, management, or sustainable use.

13. The current problems for water resources are very complex and encompass excess resource usage, serious aquifer contamination and paying the tax on using national waters.

14. Water resources have been regulated by the health sector and the environmental sector, including the potable water storage services, sanitary sewers, and garbage disposal. Legislation in the water sector is fairly broad and spread out across several laws. The current Water Law was issued in 1927 and has lost effect and operational capacity. Other important laws governing water resources are: the Health Code and the Drinking Water and Sanitation Sector Framework Law.

15. There is a lack of coordination and overlapping competencies between the different institutions regulating this resource. The Secretary of Health holds the responsibility for regulating everything related to managing and disposing of human waste, wastewater, and rainwater. SERNA has the responsibility for protecting watersheds and supplying permits for water sources. COHDEFOR has a watershed conservation department. The SANAA has the responsibility for promoting developing potable public water, sewage, and rainwater services. The ENEE has the responsibility for promoting electricity installations throughout the country, conserving watersheds, and generating electric energy from water, air, or biomass. The municipalities are in charge of providing services.

16. In 2003, the Potable Water and Sanitation Sector Framework Law was approved, which transfer the powers that SANAA had to the respective municipal governments. There is unrest about whether this law involves privatizing the water service, since the mayor's office may give them out as a concession to private companies. This law created the National Potable Water and Sanitation Council (CONASA in Spanish) as an organization for inquiries and coordinating, creating, and managing national potable water and sanitation policies. It is faced with huge challenges for articulating institutional coordination.

17. The fishing law establishes severe regulations about the types of activities that can be carried out in the coastal areas and may be as important as the Environmental

Law in terms of regulating infrastructure development. In practice, the law rarely is applied to environmental violations.

18. DIGEPESCA is the office within the Secretary of Agriculture responsible for providing fishing permits, establishing fishing prohibitions, and implementing the fishing law in coordination with SERNA. DIGESPESCA shows institutional weaknesses, little authority, and limited resources for carrying out this responsibility, which enables promoting measures against depleting fishing resources.

19. With regard to the marine coastal zone and resources, given the fact that diverse public institutions exist with related competencies, there are deficiencies in inter-institutional coordination.

20. In 1990 the new Municipality Law introduced fiscal reforms and increased the municipalities' capacity for raising and administering their own funds. This law contains dispositions that provide the municipalities and communities with a greater share in defending, protecting, and improving their natural resources and the authority to raise their own funds and invest them to benefit the municipality, with special attention to preserving the environment.

21. No clarity exists about the relation and scope of the competencies between the national institutions and the municipalities. Currently, a good deal of confusion exists about this point and no mechanisms for coordination and collaboration exists that are sufficiently strong to clear up the situation.

22. The General Environmental Law Regulations recognize the municipalities' independence, which assume different environmental responsibilities. To fulfill these functions, the municipalities have SERNA's support with regard to information, guidance, and technical assistance; however, most of the municipalities do not have the financial capacity or the human resources to fulfill these responsibilities.

23. Honduras is a country that is highly vulnerable to natural disasters, primarily due to the increase in deforestation and the deterioration of the watersheds. The Permanent Contingency Commission (COPECO in Spanish) was created in 1990 to prevent risks and take care of natural disasters. COPECO works in coordination with 40 international, governmental, and non-governmental institutions to face serious financing problems for developing its risk management programs. Despite this, COPECO has created a major training network for preventing disasters, monitoring natural events, and taking care of emergencies from the national to the local levels.

24. With regard to land planning, there is the General Land Planning and Human Settlement Act for Sustainable Development, which provides a regulatory framework to help ensure environmental integrity for decisions on land use.

Nevertheless, a lack of trained planners and the mechanisms to do zoning exists in the region. The law also appears to show a large degree of responsibility overlap between the national, departmental, and municipal authorities. What is needed is a clear set of procedures for making zoning and land-use decisions.

25. Likewise, the Land Zoning Act promotes developing a national land zoning policy that is integrated with national planning policies. This law is very recent and it is too soon to analyze its impact. However, the law creates a complex administrative structure by establishing new councils with representatives from almost all of the governmental secretariats that represent other societal sectors, as well as new responsibilities without providing any financial content for implementing the law. Nor does the law have any specific implementation mechanisms so what is needed is additional regulations for it to be applied effectively.

26. The environmental and natural resource issue is under the jurisdiction of numerous national and municipal institutions. This institutional scattering produces institutional competency overlaps when two more institutions have competencies for the same matters. Primarily, with regard to forests and water, no *regulatory entity* exists to establish guidelines for the institutions with competencies relative to the same natural resource at the national level, and even less so for the different territorial levels, between the national and local levels. Among the laws, it is being proposed that commissions or councils be created, integrated inter-institutionally, which in many cases share their members and have not been proven to ensure inter-institutional coordination. These same spaces have been proposed in order to integrate participation by the civil society and the private sector, which although it is important, does not ensure active participation in decision-making, nor that the sector will be represented.

27. The Forestry, Protected Area, and Wildlife Bill has some of the problems that currently exist. Its conceptual take includes, within the same bill, regulations that should be carried out through different laws and upholds institutional conflicts by not clarifying the scope for national and municipal institutions in particular. With regard to protected areas, this bill will not solve the conflicts facing the organizations that are managing the country's protected areas.

28. A water resource bill is under study in the National Congress. This bill arises from one of the recommendations by the International Monetary Fund and the World Bank, within the framework of a state modernization policy. In its dispositions, the framework law facilitates greater participation by the users and provides access to private service provision models. It suggests a regulatory framework and creates a National Potable Water and Sanitation Council, as well as a regulatory entity that would be responsible for, among other things, the program for setting rates. However, a great deal of sensitivity exists within the municipal sector, political groups, and public sectors with regard to discussing this law. The public sector (civil society) is opposed because of the way it has

been conceived would cause services to be privatized, the vital liquid to become more expensive, and the loss of the right for communities to manage reserves.

29. Environmental impact assessments are technical instruments that enable making better-informed decisions about the development activities and public and private investment in the quality of the environment, ensuring a greater useful life and sustainable productivity for projects. Any project that implies an environmental risk, whether proposed by a private company or a public institution, must comply with the EIA. For example, COHDEFOR requires EIAs for using the forest; however, this requirement is not met in practice.

30. The environmental impact assessment process is not working the way it was designed or is being used as an instrument for making decisions about development, indicating a lack of process comprehension on the part of the local population and the lack of taking knowledge into consideration in the decision making process, which is mostly handled in Tegucigalpa. Likewise, public participation is not part of this process, since it does not establish when the process must be carried out and due to a lack of specific procedures.

31. There is a consensus that the main problem with environmental legislation in Honduras is how it is applied and fulfilled. In some cases, the norm has to do with programs, i.e., it tries to reach an objective for which a regulatory norm is required that does not exist. Despite the fact that voluntary compliance instruments have been established as incentives, they have not been developed or set in place. There are no programs for disclosing and training about environmental legislation, for neither the public employees nor the general citizenry. Public participation in decision-making necessarily requires information and training mechanisms. The governmental agencies in charge of enforcing environmental laws and regulations face multiple limitations due to a lack of financial resources and qualified personnel. There are personnel limitations at almost all the governmental institutions as a result of the reduction in the size of and the budget for the state. Control and monitoring mechanisms have gone by the wayside. Many of the existing laws were designed without taking into consideration the financial costs for implementation.

32. No legal security exists about the right to land ownership. The property system has not covered the national territory and no links exist with the survey system. With regard to environmental matters, there are very serious consequences because the legal system in Honduras should be clear and delimit the protected areas and national and community forests. Tensions exist between reinstating the rights of the indigenous peoples and social *campesino* movements to gain land rights, conservation needs, and productive activity development interests on the part of the sectors that are economically and politically powerful.

33. It is predicted that approving the CAFTA may promote more investments in Honduras that will make use of the available natural resources. The current

environmental legislation has sufficient regulations to ensure that any use made will be sustainable. However, the application control mechanisms for these norms and institutional capacity must be reinforced and strengthened.

34. Concern exists in the different sectors about the capacity of medium and small sectors to compete with larger companies. No information exists at the citizenry level about CAFTA's contents nor its possible impact on the country. The people interviewed believe that CAFTA's main impact will be on forest and water resources. For the people making up the environmental, *campesino*, or social movements, the CAFTA suggests new risks about capital concentration.

2. RECOMMENDATIONS

1. Strengthening of Institutions with Environmental Responsibilities

Enforcement and compliance of environmental legislation necessarily requires that the responsible institutions have the capacity and human and financial resources necessary to be able to comply with their responsibilities. It also requires greater coordination between the different institutions responsible for enforcing environmental norms, so the Secretary of Natural Resources could assume the function of regulator and coordinator.

Since the environmental agenda at the beginning of the 90's, a recommendation has been made to strengthen competent environmental institutions, "… it is essential that the existing institutional structure be revised. In the first place, it is appropriate to keep in mind that environmental management is not the exclusive competency of an isolated organization; on the contrary, it is a central concept that should be present in the activities carried out by the different public administration institutions. In addition, in order to avoid overlaps and interference, it is necessary to redefine competency for the different institutions and design appropriate coordination mechanisms …"[82]

The main institutional conflicts must be clearly identified, the jurisdiction for each institution must be cleared up, and effective coordination mechanisms must be established that will enable rationalizing the use of what human and financial resources the state has, as well as opening spaces for collaboration with other sectors such as the academic sector (universities and research centers), civil society (non-governmental and local organizations), and the private sector.

Decentralizing administrative responsibility may have positive results but it could cause problems in some areas. Decentralization must be done when the regional offices have the experience and technical resources to deal with problems. Since the current limitation consists of staff and financial resources, decentralization would only have the effectiveness allowed by the resources being assigned.

[82] Rendón Cano, Julio. "Agenda ambiental de Honduras," (The Honduran Environmental Agenda) 1991.

Private non-governmental organizations, universities, and international organizations have experienced staff, technical knowledge, and the resources to deal more directly with specific environmental problems and to support the work of institutions with environmental responsibilities. Clear collaboration and participation relationships may alleviate part of the heavy governmental bureaucracy load, reduce discretionary decisions and maybe make the fight for environmental quality more effective.

It should be kept in mind that the CAFTA will mean that each country will comply with its environmental legislation; otherwise, it may be subject to trade or financial sanctions. To that end, the government of Honduras should allocate economic resources to strengthen the competent environmental institutions, not just to prevent any possible trade or financial sanctions, but to improve the country for the spaces opened up by free trade such as an increase in investments, which in turn would cause a more intensive use of natural resources.

2. Harmonizing Environmental Legislation with Other Laws such as Those Regulating Investment.

Legislation and institutions with jurisdiction over the production sector such as agriculture, forestry, tourism, and industry have not properly incorporated conservation objectives. Investment should be clear about and aware of the need to comply with the environmental legislation in effect.

These two legal variants, both environmental and production, should be complementary and in harmony so that more investment is generated, as well as more development with proper protection of the natural resources that sustain it. This harmonization process is a fundamental element for preparing the country to be approved for the CAFTA. Complying with the CAFTA obligations would be difficult without any coherence within the Honduran legal framework, which integrates both environmental legislation and legislation related to production and investments.

3. Strengthening Legal Environmental Norms.

The law-making processes, both nationally and locally, should begin with taking into consideration the socio-economic context and promote participation by those interested sectors that may be affected by the regulations. In addition to mandate and control mechanisms, adopting economic incentives could be used as support for the private sector to participate in environmental responsibilities, which under many circumstances the government cannot handle effectively.

Some areas exist where a legal vacuum has been identified that needs to be resolved. The environmental law creation process requires additional political support to deal with urgent environmental problems.

The following issues have been identified that should be regulated:

- Conservation, sustainable use and fair and equitable distribution of the benefits derived from biodiversity, particularly when related to access to genetic resources and intellectual property of life forms.
- Conservation and sustainable use of wildlife.
- Conservation and sustainable use of coastal marine resources.
- Administering and managing protected areas and the different forms of governing them in accordance with the stakeholders taking part.
- Environmental crimes and the jurisdiction that hears their cases.

In addition, in relation to the bills under discussion, it is believed that the forest bill should exclude taking protected areas and wildlife into consideration. Also, the water bill is ambiguous about the national administrative structure and training at the municipal level.

4. Strengthening Municipal Capacity:

The current decentralization policies have given responsibilities and obligations with regard to environmental matters to the municipalities. Unfortunately, the municipalities do not receive sufficient training and human and financial resources to be ensured that they will be able to fulfill the environmental competencies. Consistent, systematic training should be given on environmental legislation and administrative and judicial procedures in general.

The coordination levels with national institutions should be clear and mechanisms should be developed for collaboration, control, and follow-up. To that end, spaces for participation by civil society and the production sector should also be promoted and ensured from the municipal level. Therefore, all citizens in general should be aware of their environmental rights and duties. An opening should exist for the projects and initiatives should be developed at the municipal level that may provide a contribution to promoting creative ways to conserve and for sustainable use, primarily from the more marginalized sectors such as *campesinos* and indigenous peoples.

The municipal and other local authorities could show that they are more efficient and effective with regard to costs, particularly when they are supported by local citizens and environmental groups.

5. Incorporating and Strengthening the Environmental Component within the Justice Administration Program.

What is needed is a permanent training program on environmental legislation, for both technical and legal aspects, for people participating in the Justice Administration function: judges, district attorneys, and public defenders. This program could be supported by the Environmental Protection Agency (EPA) in coordination with the judicial association.

The Environmental Prosecutor's Office should be strengthened so it can extend its activities throughout the country. This control organization has been mentioned as one of the most active in environmental legislation compliance activities. It needs strengthening in the form of human resources so it can have prosecutors in all the country's departments, equipment for collecting evidence, inspections, etc., and training programs on administrative, technical, and legal issues, including evidence procedures and methods.

6. Strengthening Public Participation.

In order to provide a real opportunity so citizens can participate in making decisions, informational programs must necessarily be developed about environmental rights and duties. The competent institutions should establish and fortify communications channels with civil society and the private and academic sectors, to keep them informed about projects or activities (whether public or private) that may affect them; about legal or administrative reforms and in general maintain forms of accountability.

Specific procedures should be established about information access, precautionary measures or alternatives to prevent current or potential environmental damages, along with legal channels that ensure they function.

7. Collaboration of Relationships with All Sectors of Society.

To improve environmental legislation application and compliance, the government institutions can promote and develop a voluntary compliance system where the private sector commits itself to environmental quality standards and to follow up. Incentives can also be developed, along with eliminating counterproductive incentives that promote pollution or improper use of natural resources instead.

Private sector efforts should be segment focused, providing them special conditions so the weaker segments may improve their environmental performance, allowing them, through relative, gradual norms, to reach acceptable compliance levels, and to support those companies that can reach international levels of environmental performance so they have the ability to maintain their international competitiveness.

One mechanism for promoting private sector involvement is the promising growth of "Corporate Social Responsibility" (CSR) initiatives across the region. Through organized private sector programs, firms are learning about global trends toward greater company involvement in solving pressing social, environmental and institutional problems facing their countries. Instituto Ethos in Brazil was the pioneering effort in Latin America. More recently, the Guatemalan organization CENTRARSE launched a set of criteria for companies to measure and evaluate their contributions toward a number of national problems and development objectives, including the environment. The most promising program in the region, however, appears to be an initiative from the Costa Rican "Asociación de Empresarios para el Desarrollo" (the Association of Businessmen for Development – AED in Spanish). AED sought the help of INCAE, the region's

leading graduate business school, to design a set of CSR criteria that would promote improved firm performance, advance toward national development goals, and compare favorably with the best CSR programs at a global level (allowing the program to be used to promote trade and company strategy). INCAE and AED are currently finalizing the criteria through a rigorous public participation process designed to ensure input and commitment from the government, civil society, the private sector, international advocacy organizations and other stakeholders. This program could be easily adapted to Honduras' needs and achieve similar objectives.

The universities should collaborate with the competent institutions and social organizations, providing information about national environmental issues. It requires greater disclosure of the available information. Forming schools of law should take environmental legislation into consideration when training better professionals to apply this set of norms.

Civil society should strengthen its ability to file complaints, its access to information, its participation channels in decision-making, and its ability to make proposals when faced with problems that arise.

V. Bibliography

Books

Bustillo Pon, Jaime; "Biodiversity Assessment": USAID-Honduras Report, december 2002.

Contreras Hermosilla, Arnoldo. "Forest Law Compliance, An Overview." August, 2001.

"Directrices para el Desarrollo Ambiental Sustentable de Honduras, Area temática: Políticas Ambientales", no. 1 Tegucigalpa, julio de 2002.

"Directrices para el Desarrollo Ambiental Sustentable de Honduras, Area temática: Cumplimiento de la Legislación Ambiental en Honduras", no. 3 Tegucigalpa, junio de 2002.

"Directrices para el Desarrollo Ambiental Sustentable de Honduras, Área Temática: Manejo sustentable de bosques", no. 4, Tegucigalpa, junio 2002.

"Directrices para el Desarrollo Ambiental Sustentable de Honduras, Área Temática: Manejo Sustentable de los Ecosistemas de Agua Dulce", no. 5, Tegucigalpa, julio 2002.

"Directrices para el Desarrollo Ambiental Sustentable de Honduras, Área Temática: Manejo Integrado de Recursos Marino Costeros", no. 6, Tegucigalpa, julio 2002.

"Directrices para el Desarrollo Ambiental Sustentable de Honduras. 2002. Área Temática: Manejo sustentable de áreas protegidas y biodiversidad." No. 7. Tegucigalpa.

"Directrices para el Desarrollo Ambiental Sustentable de Honduras. 2002. Área Temática: Desarrollo Energético." No. 9. Tegucigalpa.

EPA United States Environmental Protection Agency, Office of Enforcement LE-133, "Principios de Cumplimiento y Aplicación de la Ley Ambiental", julio 1992, EPA/300-F93.

Laarman, Jan. Government Policies Affecting Forests in Latin America: an agenda for discussion. Inter American Development Bank, Environment division. June 1995.

Hawkings & Associates Staff, 2002, "Aspectos legales del desarrollo turístico costero en Honduras", Informe 4, Honduras Proyecto de Turismo Costero Sostenible, World Bank.

Morale, César Aníbal; Alcántara, Oscar René; "Integración de Sistemas Locales de Alerta en la Estructura Nacional." Presentado en Segunda Conferencia de Alerta Temprana, Bonn Abril, 2003.

"Poverty Reduction Strategy Paper." Tegucigalpa, August 2001.
Rendón Cano, Julio. "Agenda ambiental de Honduras", 1991.

Redón Cano, Julio. "Análisis de la legislación Forestal en Honduras. Proyecto para el desarrollo de políticas Agrícolas de Honduras. Julio 1996.

USAID. "Honduras Country Plan in support of the Central America and Mexico Regional Strategy." 2003-2008.

USAID. New Activity Desription. "Water Resource Management Activity."

USAID. Shifting to High Gear: "Accelerating Growth and Prosperity in Central America and Mexico by Rewrding Sound Policies and Performance." August 2003.

Revistas.

Diario Oficial La Gaceta, República de Honduras. Juves 6 de enero de 1994.

"Medicamentos Jaqueca del CAFTA." Informe Especial. El Finaciero. 23-29 de febrero e 2004.
Redon Cano Julio, "El régimen Jurídico de la Propiedad Forestal." Revista de la Facultad de Derecho, UNAM. Octubre 1988.

Castellanos, Julieta. "Los Intereses detrás de la Ley Forestal." El Heraldo. Martes 11 de mayo de 2004.

U.S.- Central America Free Trade Agreement. Interim Environmental Review. Office of the U.S. Trade Representative. August, 2003.

Soberanía Resistencia y Solidaridad. Foro Panamá. Febrero 2003.

Paginas en Internet

Banco Interamericano de Desarrollo, Red de Desarrollo Municipal, disponible en Internet en: www.iadb.org/rdm/paises.cfm/paises_Honduras

Leyes:

Anteproyecto de Ley Forestal, de la Areas Protegidas y de la Vida Silvestre. Agenda Forestal Hondureña. Septiembre, 2001.

Acuerdo Número 109-93. Reglamento General de la Ley del Ambiente. Diario Oficial La Gaceta de la República de Honduras.

Acuerdo Número 1118-92, Instrucciones a COHEFOR para agilizar actividades en Areas Protegidas.

Acuerdo Número 1039-93. Reglamento al Título VI. Aspectos Forestales del Decreto 31-92 DEL 5 DE MARZO DE 1992.

Acuerdo No.1570-98. Reglamento de Bioseguridad con énfasis en plantas transgénicas.

Acuerdo No. 000420. Donde se Declara Honduras como Miembro de la Comisión Nacional de Biodiversidad.

Código de Salud. Decreto Número 65-91. Diario Oficial La Gaceta, República de Honduras.

Decreto Número 104-93. Ley General de Salud.

Ley de Aprovechamiento de Aguas Nacionales.

Ley de Bosques Nublados. Decreto 87-87.

Ley de la Corporación Hondureña de Desarrollo Forestal. Decreto de Ley N 103.y Deceto Número 199-83 que reforma el capituo III en sus artículos 9,11,12 y 14.

Ley de Forestal. Decreto Número 85.

Ley de Incentivos a la Forestación, Reforestación y a la protección del Bosque. Decreto 163-93.

Ley para la modernización del Sector Agrícola y Reglamentos aplicables en el Sub Sector Forestal. Decreto 31-92.

Ley de Ordenamiento Territorial. Decreto No. 180 –2003. República de Honduras.

Ley de Municipalidades. Decreto Número 134-90.

Ley Marco del Sector Agua Potable y Saneamiento. Decreto No. 118-2003.

Ley General de Minería. Decreto No. 292-98.

Proyecto de Ley General de Aguas.

Recopilación de leyes Hondureñas sobre turismo, Araeas Protegidas y Fauna y Flora Silvestre. Tegucigalpa, Honduras.

Reglamento de la Ley de Contingencias Nacionales. Decreto 9-90-E.

Tshinkel Henry. “Comentarios a la Propuesta de la Ley Forestal de Honduras: Segunda Visita.” Tegucigalpa, Honduras. Febrero 2000.

Otros documentos:

"Gestión Forestal Municipal: Una nueva alternativa. El caso de Honduras." Proyecto de Gestión Forestal entre países de América Latina. Tegucigalpa. 2003.

Informe sobre Salud 1999, disponible en Internet en: www.paho-who.hn/resultad.htm#proteccion

Política Forestal de la Administración del Presidente Ricardo Maduro. Periódo Febrero de 2002 a Dicimebr de 2005.

Redon Cano, Julio. "Aspectos legales e institucionales relacionados con el medio ambiente." Seminario sobre Derecho y Política Ambiental en America Latina y el Caribe. Santiago, Chile 1993.

Redon Cano, Julio. "Diversos Aspectos relacionado con la ordenación del medio ambiente, el caso de Honduras." Seminario sobre Derecho y Politica Ambiental en America Latina y el Caribe. Santiago Chile, 1993.

Redon Cano Julio, "La legislación forestal en Honduras; Algunas Implicaciones Ambientales." Seminario sobre Derecho y Politica Ambiental en America Latina y el Caribe. Santiago Chile, 1993.

Redon Cano Julio, "Análisis legal de los sietemas de la tenencia de la tierra y Bosques. Su Conservación y uso sostenido." Conferencia.

Sandres, Luis; Castaneda Catherine. "Diagnóstico sobre la legislación Ambiental en Centroamerica." Segundo Informe DE Actividades. Tegucigalpa, Honduras. 1988.

Segura, O.Kaimowitz, D. Rodríguez, 1997, "Políticas forestales en Centroamérica: análisis de las restricciones para el desarrollo del sector forestal", IICA-Holanda/LADERAS C.A., CCAB-AP, Frontera Agrícolas, 348p.

UNCTAD, Taller Regional de Expertos sobre Bienes y Servicios Ambientales, Habana, Cuba, marzo, 2003: Informe de Honduras Organización Panamericana para la Salud – Honduras:

List of Interviews:

Arq. Edgardo Derbes Proyecto PATH, Asesor principal Proyecto de Administración de Tierras de Honduras.

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Pedro Landa, Caritas-Red de comunidades afectadas por la minería

Sheila Young, USAID

Roy Murillo, Asesor Ministro y ex Jefe Dpto Legal, INA.

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Ingeniero Adrián Cruz, Jefe Unidad Ambiental Municipal de Catacamas, Olancho.